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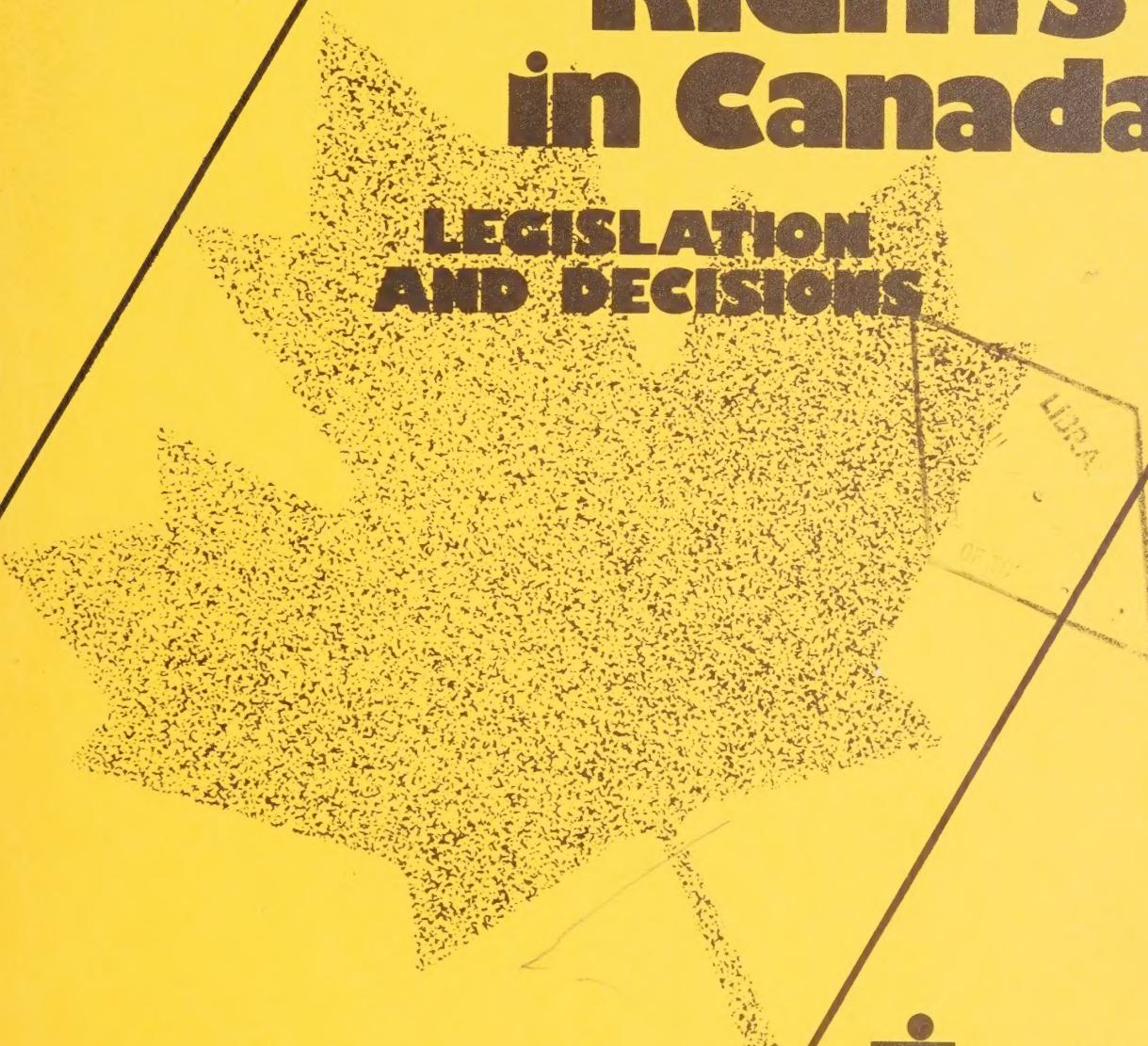
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1975 HUMAN RIGHTS in Canada

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HUMAN RIGHTS IN CANADA 1975

Legislative Research

CANADA DEPARTMENT OF LABOUR

Hon. John Munro
Minister

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Deputy-Minister

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Foreword

The purpose of this publication is twofold; to outline human rights legislation in Canada as of December 31, 1974, and to provide a sampling of pertinent decisions which have been rendered by courts and tribunals.

For several years the Legislative Research Branch reported changes in human rights legislation through such Branch publications as Labour Standards in Canada and the Legislative Review, as well as through articles in The Labour Gazette.

Greater public interest in human rights has made a more comprehensive report necessary.

This publication was co-authored by Cal McKerral and Pierre Lépine of Legislative Research.

N. Kean,
Acting Director,
Legislative Research.

INDEX

| | CONTENTS | PAGE |
|-----|-------------------------------------------------------------------------------|------|
| I | Federal and Provincial Jurisdiction Over Human Rights | 1 |
| II | The Canadian Bill of Rights | 2 |
| III | Analysis of Legislation | |
| 1. | General | 4 |
| (a) | Publications, Signs, Display of various Representations | 4 |
| (b) | Public Accommodation, Services, Facilities | 5 |
| (c) | Association with Minority Groups | 7 |
| (d) | Contracts | 7 |
| 2. | Employment and Employment-Related Subjects | |
| (a) | Employers | 7 |
| (b) | Employment Agencies | 10 |
| (c) | Application Forms, Advertisements and Inquiries in Connection with Employment | 11 |
| (d) | Trade Unions | 14 |
| (e) | Employers' Associations | 16 |
| (f) | Professional, Business and Trade Associations | 16 |
| (g) | Equal Pay | 17 |
| 3. | Occupancy, Property Sales | |
| (a) | Occupancy | 23 |
| (b) | Conveyance of Property | 25 |
| 4. | Where the Acts do not Apply | 25 |
| 5. | Special Programs | 26 |

| | PAGE |
|-----------------------------------------------------|------|
| 6. Protection of Complainants | 27 |
| 7. Administration of Acts | 29 |
| 8. Human Rights Commissions | 29 |
| 9. Enforcement - Initiation | 30 |
| 10. Enforcement - Inquiries | 31 |
| 11. Enforcement - Orders | 33 |
| 12. Prosecution and Penalties | 35 |
| IV Decisions of Courts and Administrative Tribunals | 37 |
| V Tables | 51 |
| VI Appendix A - The Canadian Bill of Rights | 65 |
| VII Appendix B - Acts | 69 |

I FEDERAL AND PROVINCIAL JURISDICTION OVER HUMAN RIGHTS

Sections 91 and 92 of the British North America Act, which provide for the division of legislative powers between the Parliament of Canada and the provincial Legislatures, make no express mention of the words "human rights" or "civil liberties".

The question therefore arises as to which of the two levels of government - the federal Government or the provincial Governments - has jurisdiction over human rights.

In order to determine who has jurisdiction over human rights, it is, first, necessary to classify them so as to make possible the distribution of legislative power between the federal and provincial Governments according to the different types of human rights.

Human rights can be classified as follows: "political rights" - traditionally including freedom of association, assembly, speech, press and religion; "economic rights" - the right to own property, and the right not to be deprived thereof without compensation, freedom of contract, the right to withhold one's labour, etc.; "legal rights" - freedom from arbitrary arrest, right to a fair hearing, right to counsel, etc.; "egalitarian rights" - right to employment, accommodation, education, and so on, without discrimination by reason of race, colour, sex, creed, etc.

It is generally recognized that political rights, in the sense of "public rights", are essentially within the competence of the Parliament of Canada. A distinction must be made, however, between the "restriction" and "protection" of such rights. The federal Parliament appears to have the sole authority to restrict political rights, on the basis of its jurisdiction over criminal law (Saumur v. The City of Quebec, (1953) 2 S.C.R. 299; Henry Birks & Sons v. The City of Montreal, (1955) S.C.R. 799; Switzman v. Elbling, (1957) S.C.R. 285). The provincial Legislatures are competent, however, to protect political rights, by virtue of their jurisdiction over civil rights within the province (Oil, Chemical Workers International Union v. Imperial Oil Ltd., (1963) S.C.R. 584). But it is equally of the competence of the federal Parliament to deal with the protection of political rights by legislating in relation to matters falling within its jurisdiction (i.e., the 1960 Canadian Bill of Rights).

As regards the economic, legal and egalitarian rights, they are subject to either federal or provincial jurisdiction, or to both concurrently, depending on whether the activities with which those rights are connected are themselves within the legislative competence of the federal Parliament or of the provincial Legislatures.

II THE CANADIAN BILL OF RIGHTS

The Canadian Bill of Rights became law on August 10, 1960. Unlike the American Bill of Rights, it is not included in nor does it form part of the Constitution (i.e., the British North America Act). Furthermore, the Canadian Bill of Rights applies only to federal legislation; it has no effect on provincial laws. Under it, any federal law infringing one of the declared rights and freedoms shall be declared inoperative. This sanction, however, does not apply to those laws which expressly provide that they shall operate notwithstanding the Canadian Bill of Rights.

The Canadian Bill of Rights declares and recognizes that the following human rights and freedoms exist: freedom of religion, speech, assembly, association and the press; the right to equality before the law and the protection of the law; the right to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law. The above rights and freedoms exist without discrimination by reason of race, national origin, colour, religion or sex. The Bill of Rights also guarantees such rights as the right to counsel and a fair hearing, the presumption of innocence, protection against cruel punishment, the right to an interpreter and certain rights of an arrested person.

However, the Canadian Bill of Rights has not, in practice, had any substantive effect. In most cases where the Bill was invoked the courts held that it did not apply. Canadian appellate courts, in particular, have treated the Bill as, at the most, providing rules for construction of federal legislation. This has been so notwithstanding the retroactive character of the Bill of Rights in its declaration that no law of Canada may derogate from it unless so expressly declared, and notwithstanding also the direction to the courts to construe and apply federal legislation so as not to infringe the declared rights and freedoms.

On the whole, there have been strong judicial views expressed that the Parliament of Canada did not intend, by enacting the Bill of Rights, to alter its own previously enacted laws which may be in conflict with the Bill. The Courts have said instead that the Parliament of Canada would have included a proviso in the Bill itself that it was its will to render the Bill applicable to federal laws passed prior to the Bill's enactment.

The limited scope of application of the Canadian Bill of Rights, and its resulting ineffectiveness in protecting human rights, gave rise, a few years ago, to a suggestion by the federal Government that the fundamental rights of all Canadians would be more effectively guaranteed by a constitutionally entrenched Bill of Rights. Such an amendment to our Constitution would declare invalid any existing or future law inconsistent with the Bill. Suffice it to say that this proposal of the federal Government did not meet with the provincial Governments' approval, a condition precedent to any constitutional change.

That proposal, and others made in recent years, have one thing in common: all point to the need for protecting human rights more effectively than presently does the Canadian Bill of Rights. Major disagreements still exist, however, with regard to the best mutually acceptable method of providing such protection.

III ANALYSIS OF LEGISLATION

1. General

(a) Publications, Signs, Display of various Representations

All jurisdictions in Canada except Québec and the federal have enacted prohibitions against publication or display of discriminatory signs, symbols, and other representations.

Further, the provisions include (except for Alberta and British Columbia) a prohibition against permitting others to do so. This would apply in a case where, for example, one person allowed another to place a discriminatory sign on land which the former owned or controlled.

The jurisdictions which prohibit these practices and the grounds upon which the discrimination is prohibited, are listed below.

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|-------------------------------------------------------------------------------------------------------------------|
| Alberta | race, religion, beliefs, colour, sex, age (45-65), ancestry, place of origin |
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin, political belief |
| Manitoba | race, nationality, religion, colour, sex, marital status, ethnic or national origin |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | any purpose |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status |
| P.E.I. | race, religion, religious creed, colour, ethnic or national origin |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |

| | |
|-----------------------|---------------------------------------------------------------------------------------------------|
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

All of the jurisdictions listed above (except the Yukon) state explicitly that the prohibition against discriminatory publications, signs, etc., is not meant to limit the free expression of opinion.

Alberta allows a sign, display, etc., to express any bona fide qualification for employment, and states also, as does Manitoba, that identification of facilities customarily used by one sex does not violate the provision.

New Brunswick allows exceptions based on bona fide qualifications pertinent to sex or marital status, as determined by the Human Rights Commission.

(b) Public Accommodations, Services, Facilities

All jurisdictions except the federal have enacted prohibitions against discrimination in the areas of public accommodations, services, and other public facilities. In Quebec, the legislation (The Hotels Act) is limited to the provision of lodging, food, and other services by hotels, restaurants, campgrounds and trailer parks.

The jurisdictions which have enacted provisions in the areas mentioned, and the grounds upon which discrimination is prohibited are as follows:

| <u>Jurisdictions</u> | <u>Prohibited grounds</u> |
|----------------------|-------------------------------------------------------------------------------------------------------------------------|
| Alberta | race, religious beliefs, colour, sex, ancestry, place of origin |
| British Columbia | race, religion, colour, sex, ancestry, place of origin. (The grounds listed are not intended by the Act to be limiting) |
| Manitoba | race, nationality, religion, colour, sex, age, ethnic or national origin |

| | |
|-----------------------|-------------------------------------------------------------------------------------------------------------------|
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status |
| P.E.I. | race, religion, religious creed, colour, ethnic or national origin |
| Québec | race, colour, beliefs, nationality, ethnic origin, place of birth |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

British Columbia, Manitoba, and Ontario allow exceptions to the prohibition of the provision of public accommodations, services, or other facilities on the grounds of sex, where public decency is at issue.

British Columbia also allows an exception on grounds of sex for purposes of determining insurance benefits or premiums.

In the Yukon, discrimination on the grounds of sex is excepted where the accommodation, service, or facilities are customarily used by one sex.

In New Brunswick, discrimination on the grounds of sex and marital status is excepted where there is a bona fide qualification, as determined by the Commission.

(c) Association with Minority Groups

Only one jurisdiction, i.e., Nova Scotia, provides a comprehensively worded prohibition against discrimination because of a person's association with minority groups. The prohibition reads:

"No person shall discriminate against any individual or class of individuals in any manner prescribed by this Act because of the race, religion, creed, colour or ethnic or national origin of any person or persons with whom the individual or class of individuals associates."

Alberta prohibits discrimination in employment practices against any person because of the race, etc., of that person or of any other person.

New Brunswick prohibits discrimination because of race, etc., without referring to a particular person.

(d) Contracts

Manitoba prohibits discrimination in the making available, and in the terms and conditions of, contracts offered to the public generally.

The grounds upon which discrimination is forbidden are race, nationality, religion, colour, sex, age, marital status, and ethnic or national origin. Where a condition based on age is concerned, however, the operation of a bona fide insurance, retirement, or seniority plan is not affected.

In British Columbia and Alberta, regulations may be made requiring that contracts with the Crown, municipalities, school boards, and hospital boards contain clauses which ensure no discrimination be allowed in accordance with the Human Rights Acts of those provinces.

2. Employment and Employment-Related Subjects

(a) Employers

All jurisdictions in Canada have enacted prohibitions against discrimination in employment practices. The wording of the prohibitions varies somewhat from one jurisdiction to another, but in essence all the Acts say that discrimination is prohibited in the actual engaging of a person for work, and also in the terms and conditions of that person's being employed. This includes such matters as promotion, transfer, etc.

The term "employer" in most cases includes those such as employers' organizations, employment agencies, and others, i.e., individuals, corporations or organizations which act on behalf of employers.

The jurisdictions and the various grounds upon which discrimination in employment is prohibited are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | race, national origin, colour, religion |
| Alberta | race, religious beliefs, colour, sex, age (45-65), ancestry, place of origin, marital status |
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin, political belief (The grounds enumerated here are not meant to be limiting) |
| Manitoba | race, nationality, religion, colour, sex, age, marital status, ethnic or national origin, political beliefs |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, sex, political opinion, colour, ethnic national or social origin, age (19-65), assignment, attachment or seizure of pay |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, age (40-65), physical handicap |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status, age (40-65) |
| P.E.I. | race, religion, religious creed, colour, ethnic or national origin |
| Québec | race, colour, sex, religion, national extraction, social origin |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |

| | |
|-----------------------|------------------------------------------------------------------------------------------------------|
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin, place of residence |
| Yukon | race, religion, religious creed, colour, ancestry, sex marital status, ethnic or national origin |

Exceptions

Alberta, New Brunswick, Newfoundland and the Yukon allow an exception to all the prohibited grounds enumerated where there is a bona fide qualification for employment. Alberta also allows an exception on grounds of age or marital status, where the operation of a bona fide insurance or pension plan is concerned.

British Columbia allows an exception on the grounds of sex where public decency is concerned, and on the basis of age (45-65) where the operation of a bona fide insurance, pension or seniority plan is involved. British Columbia also allows exceptions where a criminal or summary conviction relates to the employment and where any Act respecting Canadian citizenship constitutes reasonable cause.

Manitoba allows exceptions where age, marital status or political beliefs constitute a bona fide qualification for employment, and where age must be considered in the operation of a bona fide insurance, retirement or seniority plan. The age of majority is also valid grounds for exception.

In New Brunswick, age is grounds for exception where the operation of a bona fide pension, retirement or insurance plan is concerned.

Newfoundland allows an exception where sex is a bona fide occupational qualification.

Nova Scotia provides that age is a valid exception in the case of the operation of a bona fide pension, retirement or insurance plan, and that physical handicap may be taken into account where handicap relates to a bona fide qualification for employment.

Ontario allows that sex, marital status and age (40-65) may be taken into account where a bona fide qualification for employment is concerned.

Newfoundland allows an exception to the rule regarding attachment or seizure of pay where the employees' duties would include collecting or depositing money belonging to the employer.

In the Northwest Territories, all enumerated grounds except "place of residence" may be taken into account as being a bona fide occupational qualification.

(b) Employment Agencies

The Canada Labour Code and the Acts of Newfoundland, Prince Edward Island and Saskatchewan forbid an employer, in the having or recruitment of persons for employment, to use an employment agency that practices discrimination against persons seeking employment. All these provisions are similar. .

In New Brunswick, Nova Scotia and Ontario, the employment agency is specifically forbidden to discriminate against any person seeking employment.

The Nova Scotia provision states:

No employment agency shall accept an inquiry in connection with employment from any employer or prospective employee that directly or indirectly expresses any limitation, specification or preference or invites information as to race, religion, creed, colour or ethnic or national origin, and no employment agency shall discriminate against any individual because of the individual's race, religion, creed, colour or ethnic or national origin. (Sex discrimination is prohibited by a special section.)

The Ontario provision states:

No employment agency shall discriminate against any person because of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin in receiving, classifying, disposing of or otherwise acting upon applications for its service or in referring an applicant or applicants to an employer or anyone acting on his behalf.

In effect, all the Acts forbid discrimination by an employment agency. Since "person" is defined in all the Acts except those of Nova Scotia and Québec to include an employment agency, employment agencies are prohibited from using discriminatory application forms and advertisements and from making written or oral inquiries that indicate discrimination. The Québec provision is phrased so generally as to include employment agencies.

In New Brunswick, provisions prohibiting discrimination by employment agencies do not apply where the discrimination is based upon a bona fide occupational qualification. The same is true in Ontario respecting discrimination as to sex or marital status.

Newfoundland allows exceptions in the case of attachment, seizure or assignment of wages as above under "(a) Employers".

(c) Application Forms, Advertisements and Inquiries in Connection with Employment

All the Acts, with some differences in wording, prohibit any person from using or circulating an application form or from publishing an advertisement in connection with employment or prospective employment or from making any written or oral inquiry in connection with employment that expresses either directly or indirectly any limitation, specification or preference as to the grounds on which discrimination is prohibited under the various Acts.

Several of the Acts (Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Saskatchewan and Northwest Territories) add to the provision summarized above a specific prohibition against requiring an applicant to furnish information to answer questions or to give particulars covering race, etc.

The Alberta, Manitoba, New Brunswick and the Northwest Territories provisions contain, after the clause "that expresses...any limitation, specification or preference," a second clause, "or that requires an applicant to furnish any information concerning race...."

The comparable Nova Scotia clause is "that directly or indirectly expresses any limitation, specification, preference or invites information, as to race...." The Saskatchewan clause is "that contains a question or a request for particulars as to the race...."

The British Columbia Act adds, in regard to advertisements, after the word "publish" the words "or display, or cause or permit to be published or displayed".

The Saskatchewan Act prohibits the use of any application form, the publication of any advertisement and the making of any inquiry that:

expresses either directly or indirectly a limitation, specification or preference...or an intent to make or give such limitation, specification or preference.

Ontario has separate sections prohibiting discriminatory application forms and inquiries.

No employer shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any words, symbol or other representation that indicate directly or indirectly that race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin is or may be a limitation, specification or preference for a position or employment.

No person shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any advertisement for a position or employment for or on behalf of an employer:

- (a) that contains any words, symbols or other representation; or
- (b) that is under a classification or heading,

indicating directly or indirectly that race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin, is or may be a limitation, specification or preference for the position or employment.

No person shall use or circulate any form of application for employment or make any written or oral inquiry that expresses either directly or indirectly any limitation, specification, or preference as to race, creed, colour, nationality, ancestry or place of origin of any person or that requires an applicant for employment to furnish any information concerning race, creed, colour, nationality, ancestry or place of origin.

The Ontario Code permits an exception to the above provisions where a limitation, specification or preference as to sex or marital status is based on a bona fide occupational qualification and requirement for the position.

The Québec provision is different from all the others. It states:

No person, in connection with the hiring of an employee by an employer, shall publish any advertisement or display any notice or exhibit any symbol implying or suggesting discrimination (as defined), or require information respecting race, colour, religion, national extraction or social origin.

The specific grounds upon which discriminatory application forms, pre-employment inquiries, advertisements, etc., are prohibited are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | race, national origin, colour, religion |
| Alberta | race, religious beliefs, colour, sex, age (45-65), ancestry, place of origin (sex, age, and marital status may be asked for on an application form) |

| | |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin (sex, marital status and age may be asked for on an application form, but political beliefs must not be asked for) |
| Manitoba | race, nationality, religion, colour, sex, age, marital status, ethnic or national origin |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic, national or social origin, age (19-65), assignment, attachment, seizure of pay, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, age (40-65), physical handicap |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status, age (40-65) (sex, marital status and age may be asked for on an application form) |
| P.E.I. | race, religion, religious creed, colour, ethnic or national origin |
| Québec | race, colour, religion, national extraction, social origin |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

Many jurisdictions allow exceptions to the prohibited practices on various grounds.

In Alberta, an exception is allowed on all prohibited grounds relating to information requirements from a job applicant, where there is a bona fide qualification for employment.

Manitoba allows exceptions on the grounds of sex, age, and marital status in both advertising, etc., regarding employment, and pre-employment inquiries. Age may be excepted where the operation of a bona fide insurance, retirement or seniority plan are concerned, and where the age of majority is an issue.

New Brunswick allows exceptions to all prohibited grounds in both advertising, use of application forms, etc., and in pre-employment inquiries, where a bona fide occupational qualification is concerned. Exceptions to all the provisions in this area respecting age discrimination are allowed where the operation of a bona fide pension, retirement, or insurance plan are concerned.

Newfoundland allows exceptions to all the prohibited grounds where a bona fide occupational qualification exists, and where bona fide pension, retirement, or employee insurance plans are affected. Also, the same exception as above under "(a) Employers" applies re: attachment, seizure or assignment of wages.

In Nova Scotia, exceptions exist for age provisions where there is a bona fide pension, retirement, or insurance plan, and for physical handicap, where the handicap relates to the employment, activity or association.

For advertising respecting employment, Ontario allows exceptions to the grounds of sex, marital status and age (40-65) where there is a related bona fide qualification for employment.

Saskatchewan allows exceptions on all grounds where a bona fide occupational qualification is concerned.

In the Yukon, all grounds are excepted for a bona fide qualification for employment.

(d) Trade Unions

All the Acts forbid discrimination by a trade union on any of the prohibited grounds. The wording of the federal, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Saskatchewan, the Yukon and the Northwest Territories Acts is similar. They forbid a trade

union to exclude any person from full membership or expel or suspend or otherwise discriminate against any of its members or discriminate against any person in regard to his employment by an employer.

The British Columbia, Manitoba and Ontario Acts forbid a trade union to exclude from membership or expel or suspend any person or member or discriminate against any person or member.

Alberta prohibits a trade union to exclude any person from membership therein, or expel or suspend any member thereof, or discriminate against any person or member.

The Québec provision is as follows:

No association of employees or employers' association shall resort to discrimination (as defined) in admitting, suspending or expelling a member.

New Brunswick permits discrimination by trade unions where the discrimination is based upon a bona fide occupational qualification. In British Columbia, New Brunswick and Newfoundland, the provisions prohibiting discrimination by trade unions do not apply to bona fide retirement or pension plans; minimum service requirements of such plans; or bona fide group or employee insurance plans. Finally, non-profit organizations are not covered by provisions prohibiting discrimination by unions in Manitoba, Newfoundland and Prince Edward Island.

In all jurisdictions, the grounds upon which discrimination by trade unions is prohibited are the same as the grounds upon which discrimination in employment practices is prohibited, with two exceptions.

In Nova Scotia, prohibitions against sex discrimination apply to trade unions membership but not to employers. In the Northwest Territories, prohibitions against discrimination on the basis of place of residence apply to employers but not to trade union membership.

Exceptions

Exceptions to the prohibitions against discrimination by trade unions exist in several provinces.

British Columbia allows an exception where a criminal or summary conviction relates to the membership in a trade union.

New Brunswick allows exceptions to all prohibited grounds where a bona fide occupational qualification is concerned, and also allows, as does Nova Scotia, an exception where the age of a person relates to the operation of a bona fide pension, retirement or insurance plan.

Newfoundland allows an exception on all grounds where the operation of a bona fide retirement, insurance, or pension plan is concerned.

(e) Employers' Associations

Alberta, British Columbia, Manitoba, New Brunswick, and Québec have enacted prohibitions against membership in employers' associations. These prohibitions, as well as the exceptions allowed are identical to the rules governing the activities of trade unions, as outlined above.

(f) Professional, Business and Trade Associations

In addition to provisions respecting discriminatory practices by employers' organizations, other jurisdictions have the various prohibitions apply to other groups as well. These are as follows:

| | |
|------------------|-----------------------------------------------|
| Alberta | occupational associations |
| British Columbia | occupational associations |
| Manitoba | occupational associations |
| New Brunswick | trade, professional and business associations |
| Nova Scotia | professional, trade and business associations |
| Saskatchewan | professional and trade associations |

The Nova Scotia and New Brunswick Acts make it unlawful for a professional association or a business or trade association to exclude any individual from full membership or expel or suspend or otherwise discriminate against any of its members.

A "professional association" is defined to include an organization of persons which by an enactment, agreement or custom, has power to admit, suspend, expel or direct persons in the practice of any occupation or calling.

A "business or trade association" is similarly an organization of persons with power to admit, suspend, expel or direct persons in relation to any business or trade.

In New Brunswick, the application of statutory provisions restricting membership to Canadian citizens or British subjects is not affected.

Alberta defines the term "occupational association" as "any organization other than a trade union or employers' organization in which membership is a prerequisite to carrying on any trade, occupation or profession".

The Ontario Code forbids self-governing professions to exclude from membership or expel or suspend any person or member or discriminate against any person or member because of any of the prohibited grounds.

(g) Equal Pay

All jurisdictions but Québec have enacted laws which require equal pay for equal work without discrimination on the grounds of sex.

The Québec fair employment practices law forbids discrimination in employment on the basis of sex, thus prohibiting, among other things, discrimination in rates of pay solely on the grounds of sex. Similar prohibitions against discrimination in employment are contained in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Ontario human rights legislation.

In five jurisdictions equal pay provisions are contained in the labour code -- the Canada Labour Code, Part III, Division II.I; the Ontario Employment Standards Act, Part VI; the Saskatchewan Labour Standards Act, Part V; the Nova Scotia Labour Standards Code (sections 55-57); and the Yukon Labour Standards Ordinance (sections 12.1-12.2). In five other jurisdictions equal pay provisions form part of human rights legislation -- the Alberta Individual's Rights Protection Act, the British Columbia Human Rights Act, the Newfoundland, Prince Edward Island Human Rights Codes and the Northwest Territories Fair Practices Ordinance. Manitoba and New Brunswick have separate equal pay Acts.

The New Brunswick legislation forbids an employer to pay a female employee at a rate of pay less than the rate paid to a male employee for the same work done in the same establishment.

Newfoundland forbids any employer or person acting on his behalf to establish or maintain differences in wages between male and female employees, employed in the same establishment who are performing, under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility, except where such payment is made pursuant to a seniority system or a merit system.

The Prince Edward Island Act states that an employer may not pay a female employee at a rate of pay less than the rate paid to a male employee for substantially the same work done in the same establishment. The British Columbia Act refers to the same work or substantially the same work done in the same establishment.

The Alberta Act forbids an employer to employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer (or vice versa) for similar or substantially similar work. The work is deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar or substantially similar. Reduction of an employee's rate of pay in order to comply with the legislation is prohibited.

The federal, Ontario, Saskatchewan and Manitoba provisions also protect persons of either sex against discrimination in the payment of wage rates. These provinces, and also Nova Scotia, lay down criteria for determining whether the work performed is the same or similar.

In the federal jurisdiction, an employer is forbidden to establish or maintain differences in wages between male and female employees employed in the same industrial establishment, who are performing, under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility.

In Ontario and Saskatchewan, the employer is prohibited from paying a female employee at a lesser rate of pay than that paid to a male employee, (or vice versa) for the same work (similar work in Saskatchewan) performed in the same establishment, the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions. Nova Scotia's provisions are identical to Ontario's except that they only apply to female employees.

In the federal, Alberta, Ontario and Saskatchewan jurisdictions the employer is forbidden to reduce the rate of pay of an employee in order to comply with the equal pay requirement. Further, in Ontario employee or employer organizations may not cause or attempt to cause an employer to pay wages that contravene the equal pay provisions of the Act.

In Manitoba an employer is forbidden to pay the employees of one sex wages on a scale different from that on which wages are paid to employees of the other sex in the same establishment, if the work required of, and done by, employees of each sex is the same or

substantially the same. By way of clarification, the Act states that the work of male and female employees is to be deemed the same or substantially the same if the job, duties, responsibilities, or services that the employees are called upon to perform are the same or substantially the same in kind or quality and substantially equal in amount.

All the Acts make it clear that a difference in rates of pay based on a factor other than sex does not constitute failure to comply with their requirements. In Nova Scotia, however, the employer must establish that such a factor justifies a different rate of pay.

The Ontario and Saskatchewan Acts contain specific exceptions in addition to the general exception permitting a differential based on any factor other than sex. In both provinces, differences in rates of pay based on: a seniority system; a merit system; or in Ontario, a system that measures earnings by quantity or quality of production; do not constitute discrimination within the terms of the Act.

In all provinces equal pay legislation is applicable to provincial government employees. The federal Act covers employees of Crown corporations but does not apply to other federal public servants. Rates of pay of classified public servants are set by classification, according to the type of work performed, without any distinction based on sex.

The procedure laid down for the enforcement of equal pay provisions may be invoked upon complaint by the aggrieved person in New Brunswick, Newfoundland and Prince Edward Island.

In Alberta, Manitoba and Nova Scotia, investigation may be initiated upon complaint by the aggrieved person or upon the initiative of the director appointed under the Act. In addition, in Manitoba any person may file a complaint on behalf of the aggrieved person. The provisions of the Saskatchewan Act require the director, where he receives a directive from the Minister or a request from the aggrieved person, to advise the Human Rights Commission of the complaint and to request the Commission to conduct a formal inquiry into the matter.

In the federal, Ontario and Nova Scotia jurisdictions enforcement no longer depends solely on a formal complaint. The equal pay provisions are enforced through inspection by the field staff of the respective Departments of Labour.

A complaint is to be registered in Newfoundland, New Brunswick and Prince Edward Island with the Minister of Labour (of Manpower and Industrial Relations in Newfoundland); and in British Columbia,

Manitoba and Saskatchewan with a designated officer of the Department of Labour (the director). In Alberta, complaints are made to the Human Rights Commission. The Alberta and British Columbia legislation imposes a six-month time limit for making a complaint.

In all jurisdictions, except Ontario, Nova Scotia and the federal industries, the legislation provides for an initial informal investigation into a complaint, usually by an officer of the Department of Labour. In Alberta, such an investigation is made by the Human Rights Commission.

In Newfoundland and New Brunswick, if the person designated to make the inquiry is unable to settle the matter, a board or commission of one or more persons may be appointed. In Newfoundland the commission is called the Human Rights Commission. (In Newfoundland, the Minister may, in addition, appoint a commission when he deems it desirable to have an inquiry made into any matter within the purview of the Act.)

In Alberta, the Human Rights Commission will refer a complaint that is not settled under the initial investigation to a Board of Inquiry (appointed by the Minister) to investigate the matter. In British Columbia and Saskatchewan, the director may refer the matter to the Human Rights Commission, a permanent body established under the Act. In Alberta and British Columbia, the Commission may dismiss a complaint at any stage of proceedings if it is of the opinion that it is without merit. Under the Manitoba Act, the second stage of the procedure is the appointment of a referee, who may or may not be an officer of the Department of Labour. In Prince Edward Island, the Minister must inquire into the matter if it is not settled at the earlier stage.

The Board, commission, ad hoc committee, referee or Minister is given full powers to conduct a formal inquiry. All the Acts provide that the parties to the complaint must be given an opportunity to present evidence and to make representations.

The recommendations of the board, commission, committee or referee, as the case may be, may be put into effect by an order of the Minister except under the Alberta, British Columbia and Saskatchewan Acts. Under the Alberta Act, the recommendations of the Board are made to the Commission. If the Commission is unable to effect a settlement on the course of action to be taken with the person against whom the finding was made, the Commission must deliver all material pertaining to the complaint to the Attorney General who may apply to the Supreme Court for an order. The Human Rights Commission must issue an order and in Saskatchewan it may issue an order if it finds that there has been a contravention of the Act. In Prince Edward Island, if the Minister finds the complaint to be justified, he must

direct the course of action that ought to be taken and may issue an order to carry the course of action into effect. Under all the Acts, compliance with the order is required.

In Newfoundland, the order of the Minister may be appealed to the Supreme Court. Under the Alberta Act, a decision of the board of inquiry may be appealed to the Supreme Court. An appeal of a decision or order made by the Saskatchewan Human Rights Commission may be made to a judge of the Court of Queen's Bench. In British Columbia, an order of the Human Rights Commission may be enforced by filing it in the Supreme Court of the province.

In British Columbia a board of inquiry may direct the person whom it has found to be in contravention of the Act to cease or rectify the contravention. It may also include in its order a direction to pay the wages lost as a result of the contravention. In Saskatchewan, where the Human Rights Commission finds that a contravention of the Act has been made it may order compliance with the provisions including the payment of compensation to the aggrieved party for previous service that was the subject of the complaint. Every person who violates the provisions of the federal Act is guilty of an offence and is liable on summary conviction to a fine, imprisonment, or both. The employer may also be directed to pay arrears of wages to which the employee was entitled. In Alberta the judge may order compensation for the person discriminated against for all or any part of any wages or income lost or expenses incurred by reason of the discriminatory action.

In Ontario, the Director of Employment Standards (who, under the direction of the Minister of Labour, administers the Employment Standards Act) has authority to determine the amount of wages owing to an employee, where in his opinion an employer has contravened the equal pay provisions. The employer must be given a chance to be heard. For purposes of enforcement of the Act, this amount is to be deemed unpaid wages.

Where the director cannot determine the amount owing, the Minister may, on his recommendation, appoint a board of inquiry. The board is required to hear the parties and to recommend to the director the course of action that ought to be followed.

Under the wage collection procedure of the Employment Standards Act, the director is empowered to collect unpaid wages for an employee up to a maximum of \$2,000 and the employer is subject to a penalty of 10 per cent of the amount owing. An employer who has paid the wages and penalty as required has the right to apply to the Minister for a review, whereupon a person designated by the Minister is required to hold a hearing, giving the employer full opportunity

to make submissions, and to decide the amount owing to the employee. If the employer is dissatisfied with the Minister's decision, he may appeal the decision to the Supreme Court on the grounds that it is erroneous in point of law or in excess of jurisdiction.

The legislation in Nova Scotia is similar to that in Ontario. Where the Director of Labour Standards finds that an employer has not paid equal wages, he may direct the employer to pay the amount due to the employee to the Labour Standards Tribunal. If he disputes the direction, the employer may apply to the Tribunal for a determination of the amount. If the Tribunal finds the employer is indebted to the employee, it must order the employer immediately to pay over to the Tribunal the amount of pay found to be unpaid. The person to whom the order is directed must forthwith comply with the order.

Provision is made in all the Acts for prosecution in the courts as a last resort. Failure to comply with the Act or an order is made an offence punishable by a fine. In Newfoundland, Ontario and Saskatchewan, the convicting magistrate must order the payment of wages due, in addition to imposing a fine. Under the federal Act, an employer convicted of an offence under the Act may, in addition to any other penalty, be made liable for payment of wages found to be due.

Each of the Acts, except the New Brunswick Female Employees Fair Remuneration Act, makes it an offence for an employer to dismiss or otherwise discriminate against an employee because he has made a complaint or given evidence under the Act.

A number of the laws provide that a person claiming to be aggrieved by an alleged contravention of the Act has a choice of initiating court proceedings or of making a complaint. Some Acts stipulate that the right of an employee to take any other proceeding for recovery of wages to which he is entitled is not barred by reason of any remedy provided for in the Act.

The Northwest Territories Fair Practices Ordinance, which is a Human Rights Code, provides for equal pay for equal work. The Ordinance forbids an employer to employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer for similar or substantially similar work. The work is deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar or substantially similar. Reduction of an employee's rate of pay in order to comply with the legislation is prohibited. A difference in rates based on a factor other than sex does not constitute discrimination.

Enforcement is initiated by complaint of the aggrieved person to the officer appointed by the Commissioner of the Northwest Territories to deal with such matters. The Commissioner may then appoint an officer to inquire into the complaint. If settlement is not reached through conciliation, the officer must recommend to the Commissioner the action that should be taken with respect to the complaint. The Commissioner may issue whatever order he thinks necessary to put the recommendations into effect. A person affected by the order may appeal it within 10 days to a judge of the Territorial Court, whose decision is final.

In the Yukon Territory, sections of the Labour Standards Ordinance prohibit an employer from paying a female employee at a lesser rate of pay than that paid to a male employee or vice versa for "the same work performed under similar working conditions" except where such payment is made pursuant to a seniority system; a merit system; a system measuring earnings by quality or quantity of production; or a differential based on any factor other than sex. Reductions of an employee's pay in order to comply with this legislation is not permitted. Employers' and employees' organizations are prohibited from causing or attempting to cause an employer to pay his employees rates of pay that contravene the legislation. Where the employer has not paid the wages required, the Labour Standards Officer may determine the amount owing the employee and such amount shall be deemed to be unpaid wages. Where the officer is unable to effect a determination, the matter is referred to the Advisory Board for investigation. The Board, upon review of the matter recommends what action should be taken.

3. Occupancy, Property Sales

. (a) Occupancy

Nine provinces and the two territories have enacted anti-discrimination provisions in the areas of property rental and occupancy. The wording and extent of the provisions vary from one jurisdiction to another, with some common characteristics throughout.

The Yukon and Northwest Territories limit occupancy provisions to cover only self-contained apartment dwelling units. The Yukon's provisions cover only apartment buildings with more than six dwelling units.

Alberta, Newfoundland and Nova Scotia extend coverage to occupancy (Alberta uses the term "tenancy") in commercial or self-contained dwelling units. Nova Scotia adds "or housing unit used to provide rental accommodation".

Manitoba and Ontario refer to occupancy in any commercial or housing accommodation, while New Brunswick's provisions cover occupancy in any commercial or dwelling unit.

Prince Edward Island's provisions cover occupancy in any dwelling unit.

British Columbia and Saskatchewan have relatively wide coverage; British Columbia provides for tenancy in any space...available, while Saskatchewan's provisions cover any interest in lands or occupancy thereof.

The grounds upon which discrimination in the provision of occupancy is prohibited in the various jurisdictions are as follows:

| <u>Jurisdictions</u> | <u>Prohibited grounds</u> |
|----------------------|-------------------------------------------------------------------------------------------------------------------|
| Alberta | race, religious beliefs, colour, sex, ancestry, place of origin |
| British Columbia | race, religion, colour, sex, marital status, ancestry, place of origin |
| Manitoba | race, nationality, religion, colour, sex, age, ethnic or national origin, source of income |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex |
| P.E.I. | race, religion, religious creed, colour, ethnic or national origin |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |

| | |
|-----------------------|---------------------------------------------------------------------------------------------------|
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

In Manitoba, an exception is allowed on the grounds of sex where the occupancy of the housing (except for the owner and his family) is restricted to one sex. Also, a preference for elderly persons is allowed.

New Brunswick allows exceptions on the grounds of sex or marital status, where a bona fide qualification (as determined by the Human Rights Commission), exists.

Nova Scotia allows exceptions on all prohibited grounds where the dwelling unit is a single, non-advertised, non-listed, room in a dwelling the rest of which is occupied by the landlord and the landlord's family.

Ontario allows a similar exception to that allowed by Manitoba.

In the Yukon, an exception is allowed where the dwelling unit is in a building limited to persons of one sex.

(b) Conveyance of Property

In British Columbia, Manitoba, New Brunswick, Nova Scotia, and Saskatchewan, prohibitions against discrimination in the conveyance of property have been enacted.

In all the above jurisdictions the grounds upon which discrimination is prohibited coincide with the prohibited grounds respecting occupancy, except that in the case of Manitoba, marital status is a further ground upon which discrimination is prohibited.

4. Where the Acts do not Apply

The federal Act and those of the Northwest and Yukon Territories do not apply to the Crown. Those of all other jurisdictions do. The federal provisions do, however, apply to crown corporations and agencies.

With some variation in wording, most Canadian jurisdictions exclude non-profit charitable, philanthropic, fraternal, religious and social organizations from their employment practices provisions. Newfoundland limits this lack of application to non-profit religious and fraternal organizations. In Alberta such organizations are exempted only from the provisions relating to the publishing or display of signs, notices, emblems, etc.

Nova Scotia also excludes these groups from the volunteer services provisions of its Human Rights Act.

British Columbia excludes the above-mentioned organizations from all the provisions of its Human Rights Code where they give preference to members of the identifiable group or class.

New Brunswick allows no exclusion for such organizations or corporations.

Alberta, Manitoba, Nova Scotia, Newfoundland, Ontario, Prince Edward Island, Québec, the Northwest Territories and Yukon state that employment provisions do not apply to domestic servants employed in a private home. In Nova Scotia and Newfoundland the stipulation "and living in" a private home is added.

In Alberta, employment practices provisions do not apply to a farm employee who resides in the home of the farmer who employs him.

Québec excludes from its Employment Discrimination Act managers, superintendents, foremen or representatives of an employer in his relations with employees. Directors or officers of corporations are not covered.

As does the Fair Employment Practices part of the Canada Labour Code, the Employment Discrimination Act in Québec applies only to employers with five or more employees.

5. Special Programs

In Manitoba, Nova Scotia, New Brunswick, Ontario, British Columbia and the Northwest Territories the Human Rights Commission (the Commissioner in the Northwest Territories) may approve special programs designed to promote the welfare of minority groups.

In Nova Scotia, the Commission may approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals, and any approved programs shall be deemed not to be a violation of the prohibitions of this Act.

In New Brunswick, on the application of any person, or on its own initiative, the Commission may approve a program to be undertaken by any person designed to promote the welfare of any class or persons. At any time before or after approving a program, the Commission may make inquiries concerning the program, vary the program, impose conditions on the program, or withdraw approval of the program as the committee thinks fit. Anything done in accordance with a program approved pursuant to this section shall not be a violation of the provisions of this Act.

In Ontario, the Commission may, "upon such conditions or limitations and subject to revocation or suspension, approve in writing any special plan or program by the Crown, any agency therefore, any person to increase the employment of members of a group or class of persons because of the race, creed, colour, age, sex, marital status, nationality or place of origin or the members of the group or class of persons".

In British Columbia under the new Human Rights Code the Commission may approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals and any approved program shall be deemed not to be in contravention of any of the provisions of the Act.

In the Northwest Territories, the Commissioner may "approve programs designed to promote the welfare of any class of individuals, and any such program shall be deemed not to be a violation of the provisions of this Ordinance".

In Manitoba, the Commission may approve any special plan by the Crown, any Crown agency, or any person to increase the employment of members of a group or class of persons on the basis of the race, nationality, religion, colour, sex, age, marital status, ethnic or national origin of the members of the group or class of persons.

6. Protection of Complainants

All jurisdictions except Québec contain provisions forbidding reprisals against complainants.

The federal and Saskatchewan provisions are similar, with slight variations in wording.

Federal -

No employer or trade union shall discharge, expel or otherwise discriminate against any person because he has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

More detailed provisions are found in Ontario, Manitoba and British Columbia.

Ontario and Manitoba -

No person shall,

refuse to employ or continue to employ any person;

threaten to dismiss or threaten to penalize in any other way any person in regard to his employment or any term or condition thereof;

discriminate against any person in regard to his employment or any term or condition thereof; or

intimidate or coerce or impose any pecuniary or other penalty upon any person;

on the ground that such person,

has made or may make a complaint under this Act;

has made or may make a disclosure concerning the matter complained of;

has testified or may testify in a proceeding under this Act; or

has participated or may participate in any other way in a proceeding under this Act.

British Columbia -

The Human Rights Code of British Columbia states that no person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty upon, or otherwise discriminate against, any person because that person complains, gives evidence, or otherwise assists in respect of the initiation of a complaint or other proceeding under that Act.

The Alberta, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island Acts contain a different provision covering discrimination in rental practices as well as employment. As an example, the Newfoundland provision states:

No person, employer or trade union shall evict, discharge, suspend, expel or otherwise discriminate against any person because he had made a complaint... (rest as in federal provision).

7. Administration of Acts

The Minister of Labour is responsible for fair practices legislation in seven jurisdictions - federal and six provinces. In Nova Scotia, Manitoba and Saskatchewan it is the Attorney General, in Newfoundland it is the Minister of Manpower and Industrial Relations. (The Alberta, Manitoba, Nova Scotia, Québec and Saskatchewan Acts do not actually specify the Minister responsible.) In both the Northwest Territories and the Yukon, the Commissioner is responsible for the fair practices legislation.

Subject to the direction of the Minister, a director administers the federal, British Columbia and Newfoundland Acts; a Human Rights Commission the Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan Acts; and the Minimum Wage Commission the Québec Act. The Prince Edward Island Act is administered by the Minister of Labour and Manpower Resources. The Ordinances in the Northwest Territories and the Yukon are administered by the "officer appointed by the Commissioner to inquire into complaints under the Ordinance".

In British Columbia, Nova Scotia and Saskatchewan, a director is responsible for the actual administration. The Alberta, New Brunswick and Ontario Human Rights Commissions also have directors (although this is not specified in the New Brunswick or Ontario legislation).

8. Human Rights Commissions

Eight provinces provide for Human Rights Commissions. The Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan Commissions have a role in both the administration and the enforcement of the legislation.

Besides providing for a permanent Commission of at least three members, the Newfoundland Act refers to a Human Rights Commission, which is an ad hoc body of one or more members appointed as a board of inquiry. The Québec Minimum Wage Commission performs as a Human Rights Commission for purposes of the Employment Discrimination Act.

All Commissions are appointed by the Lieutenant-Governor in Council. The Newfoundland, New Brunswick, Nova Scotia and Ontario Commissions are to have three or more members and the Saskatchewan, not less than three; the other three provinces do not specify a number. The Saskatchewan Commissioners are appointed for a five-year renewable term; Nova Scotia Commissioners for a specific renewable term; and in Manitoba, the Lieutenant-Governor in Council may determine the term of office. There is provision for designating one of the members as chairman, and Saskatchewan also provides for a vice-chairman.

A director may be appointed in Alberta and Saskatchewan, and must be appointed in Nova Scotia, Newfoundland and British Columbia. In Saskatchewan, the director is the chief executive officer and secretary of the Commission, and in Nova Scotia he is the chief executive officer and a member, with the status of a deputy minister.

All provide for the appointment of other staff, usually under the Civil Service Act.

Under the British Columbia Code, the Minister is to appoint a director who is to act as chief executive officer of the Commission and as registrar for the execution of complaints under the Act. The Minister also appoints persons to a panel who shall be eligible to serve on boards of inquiry.

In Newfoundland, the director is executive director of the Commission. Manitoba provides for boards of adjudication which are appointed by the Attorney General. These boards provide an investigative function. In cases where the Commission is unable to effect a settlement, the matter may be referred to the board of adjudication through the Minister for settlement.

9. Enforcement - Initiation

All the Acts operate through a complaint process. The Alberta and Nova Scotia Acts provide, in addition, for the investigation of a case where the Commission "has reasonable grounds for believing that a complaint exists". In Ontario, the Commission may initiate a complaint where it has reason for believing that any person has contravened any of the sections prohibiting discriminatory practices. In Manitoba the Commission may investigate on its own initiative.

In most jurisdictions the complaint must be made by the aggrieved person in writing, usually in the form prescribed.

In Ontario the complaint may be made by "any person who has reasonable grounds for believing that any person has contravened a provision of the Act". Where a complaint is made by other than the aggrieved person, the Commission may refuse to file the complaint unless the aggrieved person consents.

In Saskatchewan any person may make a complaint either orally or in writing.

In most jurisdictions the complaint must be dealt with, at least at the first stage of investigation. In the federal jurisdiction, Newfoundland, Prince Edward Island and the Territories it may be investigated. The British Columbia, Alberta and New Brunswick Commissions may at any stage of the proceedings dismiss a complaint that is without merit.

Alberta and British Columbia set a time limit on complaints - six months from the alleged contravention of the Acts. In Manitoba the time limit is one year.

Complaints are made to the director in the federal jurisdiction, Newfoundland and British Columbia, to the Minister in Prince Edward Island, to the officer appointed by the Commissioner in each of the Territories and to the Commission in the remaining provinces.

10. Enforcement - Inquiries

All the Acts provide for the settlement of complaints, if possible, by conciliation and persuasion. They provide for an initial informal investigation into a complaint by an officer who is directed to "endeavour to affect a settlement". In Manitoba the first stage is an inquiry by a board of adjudication.

Depending on jurisdiction, the investigation officer may be an officer of the Department or the Commission or any other person.

In both the Northwest Territories and the Yukon where the officer fails to settle the complaint he may, where he feels the complaint has merit, recommend to the Commissioner the action that should be taken with respect to the complaint.

In the other jurisdictions, where the informal conciliation fails, and more formal inquiry including a hearing, by a board, whether ad hoc or permanent, is provided for. In Prince Edward Island the Minister of Labour and Manpower Resources must make a full inquiry into a complaint not settled at the earlier stage.

A board under the federal, Alberta, British Columbia, New Brunswick, Newfoundland, Nova Scotia and Ontario legislation is an ad hoc body, consisting of one or more persons. It is referred to in the federal Act as an industrial inquiry commission. In Newfoundland the inquiry may be made either by the permanent Human Rights Commission or by an ad hoc Human Rights Commission consisting of one or more persons. In Saskatchewan and Manitoba, the inquiry is conducted by the permanent Human Rights Commissions and in Québec by the Minimum Wage Commission, or through one of its members or a person appointed by it.

The board or commission is appointed by the Minister in Newfoundland, Nova Scotia and Prince Edward Island by the Minister on the recommendation of the director in the federal jurisdiction, and by the Minister on the recommendation of the Commission in Alberta,

New Brunswick and Ontario. In Ontario the Commission is required to recommend whether or not a board should be appointed. In British Columbia the director may refer the dispute to a board of inquiry through the Minister. In Québec and Saskatchewan the Commission makes its own decision. The Saskatchewan Commission must report to the Minister whether it is appointing a board or not; if none is appointed, the Minister may do so.

Four of the Acts (Alberta, New Brunswick, Nova Scotia and Ontario) require the Minister to communicate the names of the members of the board of inquiry to the parties to the complaint. Except in Nova Scotia, this is to be done "forthwith". In Nova Scotia, the Minister must also communicate to the parties the terms of reference of the board. The Ontario Act specifies who are 'parties' to the proceedings.

All the boards and commissions have the powers required to make a proper investigation and determine their procedure. In Alberta and Ontario the Acts outlining proper procedures apply. All Acts but the Act of Québec provide that all parties must be given full opportunity to present evidence and make representations. Alberta and Manitoba expressly provide the right to legal counsel.

The Nova Scotia Act states that a board must conduct "a public inquiry" into the matter referred to it.

In Ontario, the members of the board of inquiry must not have taken part in any previous investigation of the complaint. The board cannot communicate with any party without giving notice of an opportunity for all to participate. If it seeks legal advice from an independent adviser, it must communicate the nature of the advice to the parties in order that they may make submissions as to the law.

The Alberta Act is the only Act which sets a time limit for the board's proceedings. Under that Act, a board of inquiry is required to report to the Administrator within 14 days after its appointment, exclusive of Saturdays and holidays, or within such longer period as the Minister may approve. The board must state in its report whether it found the complaint to be justified or not.

In the federal jurisdiction, Manitoba and Newfoundland, when the board or commission finds the complaint justified by evidence (federal - and the matter has not been settled in the meanwhile), it is required to recommend to the Minister the course that ought to be taken with respect to the complaint. In New Brunswick, recommendations are made to the Commission, which in turn makes recommendations to the Minister.

The federal and New Brunswick Acts state that the recommendations may include reinstatement, with or without compensation for loss of employment.

In Québec, The Minimum Wage Commission must report to the Minister regarding any investigation.

In Alberta, the board must report to the Commission whether it finds the complaint to be justified or not and make its recommendations where it finds the complaint justified in whole or in part.

In Nova Scotia, where the matter is settled, the board must report the terms of settlement to the Commission with any comment the board deems appropriate.

Where the matter is not settled and the board finds that the complaint is supported by "a reasonable preponderance" of the evidence, it must report to the Human Rights Commission on the course that ought to be taken. The Human Rights Commission must recommend to the Minister any action necessary to give effect to the recommendations of the board.

In British Columbia, Ontario and Saskatchewan the Commission or board does not make recommendations but issues an order itself.

11. Enforcement - Orders

Except in Québec, provision is made for orders requiring compliance. It is an offence to violate such an order.

In the federal jurisdiction, Manitoba, Newfoundland and Nova Scotia, upon receipt of the board's or commission's recommendations, the Minister may issue an order to put them into effect. In the federal jurisdiction, the Minister must furnish the persons affected with a copy of the recommendations and may publish them as he sees fit.

In Prince Edward Island, the Minister may, after his own hearing, issue an order.

The Manitoba and Newfoundland Acts provide a right of appeal from the Minister's order, to the Court of Queen's Bench and the Supreme Court, respectively.

In New Brunswick, the Human Rights Commission is authorized to issue an order to put into effect the recommendations of the board of inquiry. The order may include reinstatement, with or without compensation for loss of employment. The Commission must furnish a copy of the board's recommendations to each of the persons affected and may, if the Minister deems it advisable, publish the recommendations in the manner it sees fit.

In British Columbia, if a board of inquiry decides that the Act has been contravened, it must issue an order directing the person to cease the activity in question, and may order the person concerned to take remedial action. This may include payment of lost wages, and payment of damages not exceeding five thousand dollars. Such an order is final and may be enforced by filing a copy in the Supreme Court, or a County Court.

In Saskatchewan, where the Commission finds the complaint to be justified, and the matter has not been settled in the meanwhile, it may order the contravening party to do whatever the Commission considers full compliance and to rectify any injury or to make compensation for it.

A decision or order of the Commission may be appealed to the Court of Queen's Bench.

In Ontario, the board of inquiry must decide if the Act has been contravened and may order the guilty party to comply with the Act and to rectify any injury or make compensation for it. This order may be appealed to the Supreme Court on questions of law or fact or both. The Minister is entitled to be heard in any appeal.

In Alberta the Commission has 30 days from the report of the board of inquiry to effect a settlement regarding the course of action with the violator. If settlement is not reached it must then immediately hand its files and records to the Attorney General, who may, within 30 days, apply to the Supreme Court for an order.

The judge may order the violator to do any or all of the following: to cease the contravention and refrain in the future from the same or a similar contravention; to make available to the aggrieved person the rights, opportunities or privileges denied; to compensate for all or part of wages or income lost or expenses incurred; to do anything else the judge considers proper to place the aggrieved person in the position he would have been but for the contravention; to pay fines.

In the Northwest Territories and the Yukon, the Commissioner, after he has received the recommendations of the officer, may issue whatever order he thinks necessary to put the recommendations into effect. A person affected by the order may appeal it within 10 days to a judge of the Territorial Court, whose decision is final.

In Manitoba where a case has been passed to a board of adjudication, and the board finds that a violation has occurred it may make an order directing that lost wages be compensated for. It may also order that the guilty party do or refrain from doing something, in order that the Act is complied with.

The board may file an order with the Court of Queen's Bench, thus giving the order the status of a court judgment. Appeal may be filed with the Court of Queen's Bench.

12. Prosecution and Penalties

Violation of any provision of the Act or failure to comply with any provision of the Act or of an order made under the Act is made an offence for which a person is liable on summary conviction to a fine. Alberta does not refer to offences - see "orders" above.

Fines that may be imposed:

Maximum

| <u>Individuals</u> | <u>Others</u> | <u>Jurisdiction</u> |
|--------------------|---------------|---------------------------|
| \$ 100 | \$ 500 | Federal |
| | | Newfoundland |
| | | Prince Edward Island |
| | | Northwest Territories |
| | | Yukon |
| \$ 200 | \$1,000 | Alberta |
| \$ 500 | \$1,000 | Nova Scotia |
| \$ 500 | \$2,000 | New Brunswick |
| \$1,000 | \$5,000 | Ontario, British Columbia |

Minimum-Maximum

| | | |
|-------------|-------------|--------------|
| \$ 25-100 | \$100-1,000 | Québec |
| \$100-1,000 | \$500-5,000 | Manitoba |
| \$100-500 | \$400-2,000 | Saskatchewan |

The Acts of all jurisdictions except British Columbia (does not apply in Alberta) state that no prosecution for an offence under the Act shall be instituted without the written consent of the Minister. In Manitoba, the prosecution may be commenced on the information of any person alleging that he or any class of persons, or member of that class has been denied, abridged or restricted of rights under the Act.

In the Northwest Territories, in a prosecution for an offence, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified.

Under the British Columbia Act, a complaint may not be received or a prosecution commenced after six months have elapsed after the commission of the alleged offence.

In the Nova Scotia Act, the general principle is laid down that in any prosecution it shall be sufficient for conviction if a "reasonable preponderance of evidence" supports a charge that the accused has done anything prohibited by the Act or has refused or neglected to comply with an order made under the Act.

All the Acts except the Act of Québec expressly state that court action for an offence under the Act may be instituted against a trade union or employers' organization in the name of the union or organization, and that the union or organization is liable for the acts of any of its officers, etc., within the scope of his authority. The Nova Scotia Act states that for the purposes of any prosecution professional associations and business or trade associations shall be deemed to be corporations.

Seven statutes (federal, Manitoba, New Brunswick, Newfoundland, Saskatchewan, Northwest Territories and Yukon) further direct that a court may, in addition to imposing a fine, order the employer to pay compensation equivalent to the remuneration lost and to reinstate the employee who has been suspended, transferred, laid off or discharged in violation of the Act.

The Newfoundland Act stipulates that the magistrate, in ordering payment of lost wages and reinstatement, must give due consideration to all circumstances of the case, including any wages or other remuneration earned by the employee with another employer. For the Alberta provision - see orders above.

IV DECISIONS OF COURTS AND ADMINISTRATIVE TRIBUNALS

The following decisions are among the most recent to have been rendered by various provincial Human Rights Commissions of Inquiry and Boards of Inquiry and by appellate courts, particularly the Supreme Court and Federal Court of Canada. These decisions were selected because of the significant issues they raised in the interpretation and application of human rights legislation in the various jurisdictions. Special emphasis was laid in selecting those decisions that dealt with discrimination in employment, public accommodation and housing.

Supreme Court of Canada

THE QUEEN v. DRYBONES, (1970) S.C.R. 282; Supreme Court of Canada; November 20, 1969.

In a six-to-three decision, the Supreme Court of Canada declared inoperative section 94(b) of the Indian Act on the ground that it infringed the right of an Indian, on account of his race, to equality before the law, one of the rights recognized and declared as existing in Canada without discrimination by reason of race by section 1(b) of the Canadian Bill of Rights.

Drybones, an Indian, was found intoxicated in a hotel in Yellowknife in the Northwest Territories, where there were no reserves. The intoxication provisions of the Northwest Territories Liquor Ordinance were less stringent than those contained in the Indian Act. The differences related both to the definition of the offence and to the punishment prescribed.

The Liquor Ordinance made provisions for less severe penalties in terms of minimum fine and maximum imprisonment than those stipulated under section 94 of the Indian Act. On the other hand, the offence, under the Liquor Ordinance, was constituted by being intoxicated "in a public place" whereas section 94(b) of the Indian Act prohibited intoxication "off a reserve" on the part of Indians.

Since, however, there were no reserves in the Territories, the result was that it was not an offence for anyone, except an Indian, to be intoxicated otherwise than in a public place.

In its majority judgment, delivered by Justice Ritchie, the Supreme Court found that there was a conflict between section 1(b) of the Canadian Bill of Rights, which guaranteed the right of an individual (Indian) to equality before the law, and section 94(b) of the Indian Act, which made it an offence, punishable at law, for an Indian to be intoxicated otherwise than in a public place, whereas his fellow Canadians could, if they saw fit, do the same thing without having committed any offence or having been made subject to any penalty.

The majority of the Supreme Court held also that the Canadian Bill of Rights was more than just a rule for the construction of federal legislation: it was a statutory declaration of the fundamental human rights and freedoms which it recognized.

Consequently, the imperative words of section 2 of the Canadian Bill of Rights required the courts to refuse to apply any law, within the legislative authority of the Parliament of Canada, which could not be construed and applied so as not to abrogate, abridge or infringe one of the rights and freedoms recognized and declared by the Bill, unless it was expressly declared by an Act of Parliament that the law which did so infringe would operate notwithstanding the Canadian Bill of Rights (opinion of Supreme Court Chief Justice Cartwright (as he then was) in Robertson and Rosetanni v. The Queen, (1963) S.C.R. 651, at page 662, referred to).

Since section 94(b) of the Indian Act was a law of Canada which could only be construed in such a manner that its application would operate so as to abrogate, abridge or infringe the right of an Indian to equality before the law, one of the rights declared and recognized by the Bill of Rights, the Supreme Court of Canada declared therefore section 94(b) of the Indian Act inoperative.

ATTORNEY-GENERAL OF CANADA v. LAVELL; ISAAC ET AL. v. BEDARD, (1974) 38 D.L.R. (3d) 481; Supreme Court of Canada; August 27, 1973.

In a five-to-four decision, the Supreme Court of Canada refused to declare section 12(1)(b) of the Indian Act inoperative as denying equality before the law by reason of sex to two Indian women, contrary to section 1(b) of the Canadian Bill of Rights.

Section 12(1)(b) of the Indian Act provided that an Indian woman registered under the Act relinquished her status as an Indian when she elected to marry a non-Indian.

Both respondents in this joint appeal, Mrs. Lavell and Mrs. Bedard, had seen their names deleted from the Indian register and the band list when they married non-Indians.

Several grounds were advanced by the majority of the Supreme Court for refusing to declare that section 12(1)(b) of the Indian Act was rendered inoperative by section 1(b) of the Canadian Bill of Rights, as denying equality before the law to two Indian women.

First, it was said that the Bill of Rights was not effective to render inoperative section 12(1)(b) of the Indian Act because such legislation was passed by the Parliament of Canada in discharge of its constitutional responsibility, under section 91(24) of the British North America Act, to specify how and by whom Crown lands reserved for Indians were to be used.

Secondly, it was stated that the Bill of Rights did not require federal legislation to be declared inoperative unless it offended against one of the rights specifically guaranteed by section 1 of the Bill.

Thirdly, it was found that section 12(1)(b) of the Indian Act could be construed and applied so as not to infringe the right of equality before the law of the respondents.

According to the majority of the Supreme Court, the term "equality before the law", as used in section 1(b) of the Canadian Bill of Rights, meant equality of treatment in the enforcement and application of the laws of Canada before the law enforcement authorities and the ordinary courts of the land. No such inequality necessarily ensued from the application of section 12(1)(b) of the Indian Act because the provision that an Indian woman lost her status as an Indian on marrying a non-Indian had been in effect for one hundred years.

Finally, Justice Ritchie, delivering the majority judgment of the Court, held that the Drybones case (summarized above) had no application to the present case as it was in no way concerned with the internal regulation of the lives of Indians on reserves but rather dealt exclusively with the effect of the Bill of Rights on a section of the Indian Act creating a crime with attendant penalties for the conduct by Indians in an area where non-Indians were not subject to any such offence and penalty.

In the opinion of Justice Ritchie, the fundamental distinction between the present case and the Drybones case was that in the latter case, section 94(b) of the Indian Act could not be enforced without denying equality before the law to a racial group, whereas in this case, no such inequality of treatment between Indian men and women flowed from the application of section 12(1)(b) of the Indian Act.

Federal Court of Canada

RE FARDELLA AND THE QUEEN, (1974) 47 D.L.R. (3d), Pt. 5, 689; Federal Court of Appeal; August 1, 1974.

The Federal Court of Appeal dismissed an application to set aside a decision of a Public Service Staff Relations Board holding that an adjudicator did not err in law in determining that the order given by a residence's administrator to a child worker requiring him to oblige the students under his charge to attend religious services was legal, and that the order in no way violated the rights of either the child worker or the children to freedom of religion under section 1(c) of the Canadian Bill of Rights.

The applicant Fardella was a child worker at an Indian student residence operated by the Department of Indian Affairs and Northern Development. He had been dismissed from his position because of his repeated refusals to obey the order of the residence's administrator, which required him to oblige the Indian students under his charge to attend Anglican religious services, on the ground that he could not accept any coercion in the matter of religious observance.

Although the residence might be said to be operated under federal statutory authority which had to be construed and applied, by reason of section 2 of the Canadian Bill of Rights, so as not to abrogate, abridge or infringe freedom of religion, guaranteed under section 1(c) of the Bill, the Federal Court of Appeal endorsed the conclusion of the Board as to the correctness of the adjudicator's view.

This view was to the effect that the freedom of religion of the applicant had not been infringed since his right to believe and worship or not to believe and worship as he pleases had not been interfered with in any way. The requirement that he oblige the students under his charge to attend denominational religious services was not an infringement of his freedom, although it might have been an infringement of the religious freedom of the children, if they had been compelled to attend the services, and of the parents, if they had not been given the possibility to exempt their children from attending the religious services. In fact, no such situation ever existed.

Furthermore, the Federal Court of Appeal was of the opinion that the holding of denominational services in a residence operated and financed by the federal Government was not in itself illegal.

Finally, the Court said that if an employer's order to an employee infringed the freedom of religion of the employee or of another person, the order would be unlawful and need not be obeyed. However, the determination of the meaning of freedom of religion, as it is used in section 1(c) of the Canadian Bill of Rights, was not what the employee believed, however conscientiously, freedom of religion to be. Freedom of religion was what it was indeed within the meaning of the Canadian Bill of Rights, that is "freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma" (opinion of Supreme Court Justice Ritchie in Robertson and Rosettanni v. The Queen, (1963) 41 D.L.R. (2d) 485, at page 493, referred to).

RE SCHMITZ, (1972) F.C. 1351; Federal Court, Trial Division (acting in its capacity as Citizenship Appeal Court); October 27, 1972.

An application for Canadian citizenship was rejected by the Citizenship Court because the applicant had not resided in Canada for five of the last eight years preceding his application as required by section 10(1)(c)(i) of the Canadian Citizenship Act.

The applicant, a male, invoking the Canadian Bill of Rights, appealed that decision on the ground that the residence requirement discriminated by reason of sex since, by virtue of section 10(1)(b) and (c)(iii) of the Canadian Citizenship Act, there was a different residence requirement for the wife of a Canadian citizen: she might apply for Canadian citizenship after residing in Canada for only one year.

The Citizenship Appeal Court dismissed the appeal holding that section 10 of the Canadian Citizenship Act did not discriminate by reason of sex but merely differentiated between married and single women.

In the opinion of the Court, the different status given to an alien female who became the wife of a Canadian citizen reflected the historical antecedents of the law by which a wife might be deemed to have taken the citizenship and domicile of her husband.

Moreover, there was nothing in the Canadian Bill of Rights which prohibited differentiation with respect to status as between married and single women under the Canadian Citizenship Act; and even if there was discrimination in the Act, the Court could at most declare the offensive part inoperative, as it was decided in R. v. Drybones (1970 S.C.R. 282).

British Columbia

BRITISH COLUMBIA HUMAN RIGHTS ACT
ORDERS MADE BY THE HUMAN RIGHTS COMMISSION
1973-74

| <u>Year</u> | <u>Nature of complaint</u> | <u>Order of the Commission</u> |
|-------------|---------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1973 | Female employees discriminated against in that they were paid at a rate of pay less than the rate paid to male employees. | That the employer rectify the contravention by paying to the complainants a total sum of \$3,304.00, being wages lost by reason of the contravention. |
| 1974 | Employer refusing to continue to employ a female because of her sex. | That the company cease the contravention, re-employ the complainant and pay her the sum of \$1,939.39 for lost wages. |
| | Appeal from a decision of the Commission dismissing a complaint of discrimination by reason of sex in accommodation. | The appeal was granted. The Commission ordered the company to cease the contravention by making accommodation available to female employees on the same terms and conditions as male employees. It also ordered the company to pay to the complainant \$2,713.00. |

Saskatchewan

IN THE MATTER OF THE COMPLAINT OF WILLIAM J. TURNER AGAINST PRINCE ALBERT PULP COMPANY LTD; from the transcript of the decision of the Saskatchewan Human Rights Commission of Inquiry; May 1, 1974.

This was a complaint by Mr. Turner, an Indian, that he resigned his employment at the Prince Albert Pulp Co. owing to the discriminatory treatment he received because of his race and colour contrary to section 3 of the Saskatchewan Fair Employment Practices Act.

Mr. Turner alleged that at the time of his transfer into the machine room, the pulp mill superintendent told him: "I hope you're not like that Chippewa, Louis Wolverine, who phoned in drunk every day." The superintendent denied making this statement before the Commission.

After hearing both witnesses, the Commission was satisfied that the statement relating to Wolverine was indeed made by the superintendent.

Mr. Turner also alleged that he was not allowed to move up on shift as he should have done, and that no one else was experiencing the same treatment at this time.

On the evidence received, the Commission found that a clearly established policy of moving people up on shift existed prior to the time of Turner's complaint.

This treatment was given by Mr. Turner as the most immediate reason for his decision to quit his job at the mill.

The Commission said that, in its total effect, the treatment Mr. Turner received at the hands of the pulp mill management amounted to real discrimination against him because of his race and colour.

Accordingly, the Commission ordered the Prince Albert Pulp Co. to reinstate Mr. Turner at the same job classification or higher than that which he held at the time of the termination of his employment, with no loss in seniority or fringe benefits and with payment of lost wages as of the date of the termination of his employment to the date of his rehiring.

IN THE MATTER OF THE COMPLAINT OF DANIEL BYRD AGAINST RONALD AND CAROLL GABEL; from the transcript of the decision of the Saskatchewan Human Rights Commission of Inquiry; September 16, 1974.

Daniel Byrd, an Indian, complained to the Commission that Ronald and Caroll Gabel, the owners of a motor hotel, discriminated against him because of his race, colour and ancestry, contrary to section 3 of the Saskatchewan Fair Accommodation Practices Act, through the action of their son, Gary Gabell, who refused to rent him a room in their hotel.

The reason given by the son of the hotel owners for refusing a hotel room to the complainant, although there was a vacancy sign in front of the hotel, was that he thought Daniel Byrd had been drinking and had muddy pants and shoes.

The Commission came to the conclusion that the refusal to rent the hotel room to the complainant was based on nothing that he had said or done but was rather occasioned by the fact that the mind of the hotel owners' son was possessed by the false stereotype of "Indians" as being "dirty and drunk".

Furthermore, section 12 of the Saskatchewan Hotelkeepers Act, which provided that a hotelkeeper or his representative could require any person whom he deemed undesirable to leave the hotel, did not give Gary Gabell, as representative of the hotelkeeper, the right to deem people "undesirable" because of race, creed, religion, colour, sex, nationality, ancestry, or place of origin, and he was bound to obey the laws against discrimination in public accommodation.

Having been reasonably satisfied that the complainant had been discriminated against, the Commission ordered the hotel owners to pay to the complainant the sum of \$100.00 as general damages suffered by way of humiliation caused by the act of discrimination. It also ordered the hotel owners to send a letter of apology to the complainant for the act of discrimination which he had experienced because he was an Indian. Furthermore, the hotel owners were ordered to publish a copy of the above-mentioned letter in the local newspaper.

Manitoba

RE MCGAVIN TOASTMASTER LTD. ET AL. AND POWLOWSKI ET AL., (1973)
37 D.L.R. (3d) 100; Manitoba Court of Appeal; March 25, 1973.

This case arose from a complaint made by two female employees to the Manitoba Human Rights Commission that their employer, McGavin Toastmaster Limited, and their union, Bakery and Confectionery Workers' International Union of America, Local 389, Winnipeg, had discriminated against them with regard to their employment because of their sex, contrary to section 4 of the Manitoba Human Rights Act.

The complainants alleged that they were denied opportunities to replace less senior employees when laid off.

Following the filing of the said complaint, but before any hearing was held, the Manitoba Human Rights Commission sent a letter to the Company (and the Union) stating that the Commission, "after full review of (the) cases", resolved that certain undertakings be requested of the company, namely, reinstatement of and payment of lost wages to all women who were laid off without being given the opportunity to replace less senior employees.

As the requested undertakings were not forthcoming, the Commission then proceeded to conduct an inquiry into the complaints, held a hearing and made its recommendations to the Attorney General of Manitoba. The Attorney General issued an order which adopted in substance all the recommendations of the Commission concerning the above undertakings requested of the company.

By way of an application for certiorari, the Company and the Union then appealed to the Manitoba Court of Queen's Bench to set aside the proceedings of the Human Rights Commission and the order of the Attorney General. The appeal was allowed.

Subsequently, the Court of Queen's Bench decision was appealed by the complainants, the Commission and the Attorney General to the Manitoba Court of Appeal, which, by a majority judgment, confirmed the previous decision of the Court of Queen's Bench.

In its decision, the Court of Queen's Bench had held that the Commission, by virtue of the above-mentioned letter finding the company and the Union in breach of the Human Rights Act, prior to their being given an opportunity to be heard, had disqualified itself from further proceeding in the matter of the complaints by its prejudgment and bias, thereby failing to observe the rules of natural justice. The proceedings before the Commission having been found to be tainted by bias, the order of the Attorney General resulting therefrom was invalidated for want of jurisdiction.

Ontario

IN THE MATTER OF A COMPLAINT MADE BY BETTE ANNE SHACK AGAINST LONDON DRIV-UR-SELF LIMITED ET AL.; from the transcript of the decision of a Board of Inquiry headed by S.N. Lederman; June 7, 1974.

This was a complaint issued by Miss Shack against the London Driv-ur-Self alleging that the Company denied her employment as a rental clerk because of her sex, in contravention of section 4(1)(b) of the Ontario Human Rights Code.

On the basis of the testimony of the complainant, which was preferred by the Board to the testimony of the representatives of the Company because it was riddled with inconsistencies, it was established that the complainant presented herself at the Company's office to apply for the job of rental clerk and was informed, falsely, that the job had been previously filled.

It was also established that the Company's manager and assistant manager indicated to the Human Rights Officer, in charge of investigating the complaint, that a man was preferred for the job in question because it involved physical work in stripping down trucks, and required working in the evenings alone.

The Board of Inquiry held that the reason for the complainant's being refused an interview for the position advertised was not because the position had already been filled (since the day the complainant applied for the job it was still available, though later filled on the same day by a man) but because of discrimination by reason of sex, based on the belief that a woman was unsuitable for the position.

Furthermore, it was held by the Board that the two reasons given by the two representatives of the Company for denying employment to the female complainant--that the position of rental clerk involved physical work in stripping down trucks and that the rental clerk would have to work evenings alone--were not sufficient, in fact and in law, to excuse or justify, under section 4(6) of the Ontario Human Rights Code, their act of discrimination by reason of sex.

Having regard to the physical aspect of the job, the burden of proof rested upon the Company to demonstrate to the Board that it had a reasonable cause to believe that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved. The Company was unable to make that proof. However, it was amply demonstrated to the Board that the complainant was suitably qualified in all respects in the performance of both the office and physical duties of a motor vehicle and truck rental agent.

As regards the concern about a female working alone in the evenings, the Board dismissed this as merely one of the "stereotyped characterizations of the sexes". It was also noted by the Board that the complainant had had some experience working alone in the early hours of the morning and evening and that she did not express any concern about her personal safety.

Having found that the complainant had been made the subject of inexcusable discriminatory employment practices, the Board of Inquiry ordered that the Company pay the sum of \$100.00 in general damages to the complainant by way of compensation for the humiliation and frustration caused by the company's discriminating act.

IN THE MATTER OF THE COMPLAINT OF MISS LINDA M. KENNEDY AGAINST THE BOARD OF GOVERNORS OF MOHAWK COLLEGE OF APPLIED ARTS AND TECHNOLOGY; from the transcript of the decision of a Board of Inquiry headed by Stephen Borins; October 31, 1973.

This was a complaint made by Miss Kennedy, a Canadian citizen who was born in Jamaica and is black, that the Board of Governors of Mohawk College dismissed or failed to continue to employ her as a teacher because of her race or colour in contravention of section 4(1) of the Ontario Human Rights Code.

The essence of Miss Kennedy's complaint was that she was treated differentially from the other members of the faculty of the College and from this she submitted that it could be inferred that the College dismissed her or refused to continue to employ her because of her race or colour.

On the basis of the evidence that was heard, the Board of Inquiry was unable to reach the conclusion that the complainant had been dismissed from her teaching position at Mohawk College because of her race and colour and it accordingly dismissed her complaint.

The Board found as a fact that the relationship between the complainant and her immediate supervisor, Mr. Stanbridge, was not perfect. The complainant harboured some resentment toward her supervisor, a person whom she felt had no training whatsoever in her discipline (which was child care and social work) and a person to whom she was required to report. For the same reason, she held similar views with regard to her relationship with the supervisor of Mr. Stanbridge, Mr. Priest.

In addition, the Board found that apart from her strong devotion to her professional responsibilities, the complainant exhibited certain dominant characteristics. It was clear that as a result of those characteristics many of her colleagues, both members of the faculty and staff of the College, found it difficult to relate to her.

The Board was of the view that if a race of persons were known or shown to have dominant characteristics as a race, and if it were to be shown that a member of that race was subjected to harassment or unfair treatment as a result of characteristics common to all or most members of that race, that would raise an inference of racial discrimination.

But there had been no evidence that the dominant characteristics of the complainant were common to most or all of the members of the race of which she was a member. In the absence of such evidence, the Board was unable to find that the complainant was dismissed or that her employment was not continued because of her race or colour.

It was the Board's view that the real reason for the complainant's dismissal was that she was over-qualified for the position which she held and the institution in which she held that position.

The Board found as a fact that the complainant held superior academic credentials to those held by Mr. Stanbridge, her immediate supervisor, and Mr. Priest, who was the supervisor of Mr. Stanbridge (and, indeed, all the members of the faculty).

Both Mr. Stanbridge and Mr. Priest saw in the complainant a person who was superior to them academically, yet administratively their inferior. They recognized in her a person who might cause the administration substantial difficulty and discomfort. Mr. Stanbridge, in particular, felt threatened by the various demands of the complainant which he could neither understand nor cope with.

The Board concluded, therefore, that the reason for the decision taken by the complainant's supervisor, and concurred in by the senior administrative officers of the College, to dismiss the complainant was the supervisor's inability to understand and cope with the complainant by whom he felt challenged.

Québec

ROSE v. THE QUEEN, (1972) 19 C.R. (n.s.) 66; Québec Court of Queen's Bench; February 16, 1972.

In this case, the Québec Court of Queen's Bench dismissed a motion of an accused alleging that section 2 of the Jury Act of Québec was discriminatory in that it excluded women from the panel of jurors, thereby contravening the rights of equality before the law and due process of law guaranteed by section 1(a) and (b) of the Canadian Bill of Rights.

On the basis of the above-mentioned provisions of the Canadian Bill of Rights, the Court said that it would be incorrect to conclude, in the instant case, that women were deprived of their liberty and of their equality before the law, simply because they were ineligible to serve as jurors. Such a function did not constitute an essential attribute of a person's liberty or equality before the law; on the other hand, it was an onerous one which, until now, had not been imposed upon women.

Furthermore, it was the opinion of the Court that an accused could not be heard to complain merely because a jury contained no women: if there was discrimination, it was not the accused who was affected thereby, but those not called upon to perform jury duty.

According to the Court, the question of issue, in this case, did not concern the vindication of the rights of women but had to do with the equality of the accused before the law within the meaning of section 1(b) of the Bill of Rights. This requirement had been met since the accused in this case was subject to the same rules and the same system as all other accused.

Moreover, the finding of a jury was not dependent upon the age, occupation, profession or sex of its members; and, although the integration of women would render the jury system more humane, it would not permit the guilty to escape.

Finally, none of the grounds (partiality, fraud, or willful misconduct on the part of the sheriff or his deputies) set out in section 558 of the Criminal Code permitting the accused to challenge the array of jurors existed in the case at bar.

Note: An amendment, which was not in force on the date of the judgment in this case, had been made to the Jury Act of Québec so as to render women eligible for jury duty. However, it acquired force of law at a date later than that of the judgment.

Nova Scotia

IN THE MATTER OF A COMPLAINT BY MR. FRED MORGAN AGAINST MR. MIKEL NODLAND; from the transcript of the decision of a Board of Inquiry headed by Keith E. Eaton; November 15, 1974.

This was a complaint made by Mr. Morgan, who is black, that Mr. Nodland discriminated against him because of his race and colour, contrary to section 5(1) of the Nova Scotia Human Rights Act, in the rental of a house.

The complainant's wife, who is white, responded by telephone to an advertisement in a Halifax newspaper regarding a house for rent, owned by Mr. Nodland, and made an arrangement to visit the house.

After visiting the house with her husband in the absence of Mr. Nodland, Mrs. Morgan gave Mr. Nodland a \$50.00 cash deposit on the first month's rent, and received from him the keys to the house and permission to renovate and to move in furniture prior to the date when occupancy was to be assumed.

On the day prior to the date of occupancy, Mr. Nodland saw the complainant for the first time when he entered the house while the complainant and his wife were painting the living room.

The complainant noticed, at this time, that Mr. Nodland looked very surprised and described this as a "look of racial prejudice". After the complainant had left the house to get some more furniture, Mr. Nodland told the complainant's wife that he would not rent the house to the Morgans.

Learning what had happened on his return, the complainant went to see Mr. Nodland at his home and asked for an explanation. Mr. Nodland kept repeating "you can't live there".

Later, Mr. Nodland returned and confirmed that he would not rent the house to the Morgans and asked them to move their furniture. He said, on this occasion, something to the effect that "black and white together isn't right", and told the Morgans that they were not going to live together.

On the basis of the evidence given at the hearing by the complainant and his wife, the Board of Inquiry had no hesitation in finding that, by a reasonable preponderance of the evidence, Mr. Nodland had denied occupancy of the house to the complainant because of his colour, contrary to section 5(1)(a) of the Nova Scotia Human Rights Act.

The Board also recommended to the Human Rights Commission that an order be proposed to the Minister charged with the administration of the Human Rights Act, directing that Mr. Nodland pay \$225.00 to the complainant as compensation for the sustained financial loss resulting from the denial of occupancy, covering the cash deposit on the rent, the cost of redecoration of the house and lost wages.

V TABLES

The following tables are designed to serve as a rapid reference to the main provisions of the Acts, insofar as prohibited practices are concerned. Included are exceptions allowed in the case of certain practices, and outlines of cases where the Act does not apply.

In using the tables, the reader will see the various practices listed on the left, while the grounds upon which discrimination is prohibited are listed across the top. Where the co-ordinates meet, the space is either blank or it will contain a reference. A blank space indicates no prohibition, while a reference indicates a prohibition and the section of the appropriate Act where the provision may read in detail.

Where the provisions are contained in more than one Act, the reference is preceded by "A", "B", etc. In the case of Saskatchewan, for example, the various prohibited practices are found in three separate Acts; hence, "A", "B" and "C".

A footnote numeral found at the extreme left under "Practices" indicates that a noted exception applies to all prohibited grounds, while a footnote found in a space to the right indicates an exception on a selected ground or grounds only.

FEDERAL

A. CANADA LABOUR CODE - PART I
 FAIR EMPLOYMENT PRACTICES
 B. CANADA LABOUR CODE - PART III - STANDARDS

| PRACTICE | RACE | NATIONAL ORIGIN | DISCRIMINATION PROHIBITED | | |
|------------------------------------------------------------------------------------------------|---------|-----------------|---------------------------|------------|-----|
| | | | COLOUR | RELIGION | SEX |
| Employment, terms and conditions of | A.5 (1) | A.5 (1) | A.5 (1) | A.5 (1) | |
| Use of employment agencies that discriminate | A.5 (2) | A.5 (2) | A.5 (2) | A.5 (2) | |
| Use of employment application forms, advertisement advertisements, pre-employment enquiries | A.5 (5) | A.5 (5) | A.5 (5) | A.5 (5) | |
| Membership in trade unions | A.5 (3) | A.5 (3) | A.5 (3) | A.5 (3) | |
| Pay of males | | | | B.38.1 (1) | |
| Pay of females | | | | B.38.1 (1) | |

NON-APPLICATION OF ACT

- Employment practices provisions (other than equal wages)
- Do not apply to
 - a) Employer with fewer than five employees
 - b) Non-profit charitable, philanthropic, religious, social organization, non-profit organizations which foster religious or racial group

INDIVIDUAL'S RIGHTS
PROTECTION ACT

ALBERTA

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | RELIGIOUS BELIEFS | COLOUR | SEX | AGE (45-65) | ANCESTRY | PLACE OF ORIGIN | MARITAL STATUS |
|--------------------------------------------------------------------------|-----------|-------------------|-----------|--------------------|--------------------|-----------|-----------------|--------------------|
| Employment, terms ² and conditions of | 6 (1) | 6 (1) | 6 (1) | 6 (1) | 6 (1) ¹ | 6 (1) | 6 (1) | 6 (1) ¹ |
| Advertising, applications re: preference for applicant (employment) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) |
| Requirement of ² information on application form (employment) | 7 (1) (b) | 7 (1) (b) | 7 (1) (b) | | | | 7 (1) (b) | 7 (1) (b) |
| Membership in trade union, employers, occupational associations | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 |
| Publishing or ^{2, 4} display of signs, symbols, emblems | 2 (1) | 2 (1) | 2 (1) | 2 (1) ³ | 2 (1) | 2 (1) | 2 (1) | 2 (1) |
| Provision of public accommodation, facilities | 3 | 3 | 3 | 3 | | 3 | 3 | 3 |
| Tenancy in commercial, or self-contained dwelling unit | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Pay of males | | | | 5 (1) (b) | | | | |
| Pay of females | | | | 5 (1) (a) | | | | |

EXCEPTIONS

¹ Operation of bona fide insurance, pension plan

² Where bona fide qualification for employment

³ Identification of facilities customarily used by one sex

⁴ Free expression of opinion

NON-APPLICATION OF ACT

- Limitations re: employment, advertising, etc. re: employment do not apply to:

a) Domestic employee in private home

b) Farm employee who resides in private home of farmer who employs him

- Limitations re: display of signs, symbols, etc. Do not apply to non-profit political, religious, or common ancestry or place of origin organizations

BRITISH COLUMBIA

HUMAN RIGHTS CODE

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | RELIGION | COLOUR | SEX | MARITAL STATUS | AGE (14-65) | ANCESTRY | PLACE OF ORIGIN | POLITICAL BELIEF |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------|---------------------------|-------|----------------|--------------------|-----------|-----------------|------------------|
| • Employment, terms ^{2, 3} and conditions of preference, limitation in application forms, advertisements, inquiries re: job applicant | 8 (1) | 8 (1) | 8 (1) ¹ | 8 (1) | 8 (1) | 8 (1) ⁴ | 8 (1) | 8 (1) | 8 (1) |
| Requirement of information by job applicant | 7 (a) | 7 (a) | 7 (a) | 7 (a) | 7 (a) | 7 (a) | 7 (a) | 7 (a) | 7 (a) |
| Publishing, signs, etc. ⁷ | 7 (b) | 7 (b) | 7 (b) | | | 7 (b) | 7 (b) | 7 (b) | 7 (b) |
| • Membership in trade ³ union, employer's associations, occupational association | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) |
| • Provision of public accommodation, service, facility | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) |
| Sale of property, interest in property | 3 (2) (a) | 3 (2) (a) | 3 (2) (b) ^{1, 5} | | | 3 (2) (a) | 3 (2) (a) | 3 (2) (a) | 3 (2) (a) |
| Tenancy, terms of tenancy | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Pay of males and females | 5 | 5 | 5 | 5 | 6 | 5 | 5 | 5 | 5 |

EXEMPTIONS

- 1 Public decency
- 2 Where any act re: Canadian citizenship constitutes reasonable cause
- 3 Where criminal or summary conviction relates to employment, membership
- 4 Operation of bona fide insurance, pension, seniority plan
- 5 Determination of insurance premiums or benefits
- 6 Shared accommodation
- 7 Free expression of opinion
- Enumerated grounds not intended to be limiting

NON-APPLICATION OF ACT

- Any charitable, philanthropic, educational, fraternal, religious, or social organization (non-profit) having as a primary purpose the promotion of interests and welfare of an identifiable class or group characterized by common race, religion, age, sex, marital status, political belief, colour, ancestry, place of origin may give preference to members of the identifiable group or class

MANITOBA

A. HUMAN RIGHTS ACT
B. EQUAL PAY ACT

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | NATIONALITY | RELIGION | COLOUR | SEX | AGE | MARITAL STATUS | ETHNIC OR NAT. ORIGIN | POLITICAL BELIEFS | SOURCE OF INCOME |
|------------------------------------------------------------------------------------|--------------|--------------|--------------|--------------|--------------------------|--------------------------------|---------------------------------|--------------------------|--------------------------|--------------------------|
| Employment, terms and conditions of | A-6 (1) (a) | A-6 (1) (a) | A-6 (1) (a) | A-6 (1) (a) | A-6 (1) (a) ¹ | A-6 (1) (a) ^{1, 2, 4} | A-6 (1) (a) | A-6 (1) (a) ¹ | A-6 (1) (a) ¹ | A-6 (1) (a) ¹ |
| Referral by employment agency | A-6 (1) (b) | A-6 (1) (b) | A-6 (1) (b) | A-6 (1) (b) | A-6 (1) (b) ¹ | A-6 (1) (b) ^{1, 2, 4} | A-6 (1) (b) | A-6 (1) (b) | A-6 (1) (b) | A-6 (1) (b) |
| Membership, etc. in trade union, employer's organization, occupational association | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) |
| Advertising re: employment | A-6 (2), (3) | A-6 (2), (3) ¹ | A-6 (2), (3) ^{1, 2, 4} | A-6 (2), (3) | A-6 (2), (3) | A-6 (2), (3) |
| Pre-employment enquiries, use of application forms | A-6 (4) | A-6 (4) ¹ | A-6 (4) ^{1, 2, 4} | A-6 (4) | A-6 (4) | A-6 (4) |
| Classification, referral by employment agency | A-6 (5) | A-6 (5) ¹ | A-6 (5) ^{1, 2, 4} | A-6 (5) | A-6 (5) | A-6 (5) |
| Contracts offered to public | A-7 (1) | A-7 (1) | A-7 (1) ² | A-7 (1) | A-7 (1) | A-7 (1) |
| Publishing, signs ³ , notices, etc. | A-2 (1) | A-2 (1) | A-2 (1) ⁸ | A-2 (1) | A-2 (1) | A-2 (1) |
| Provision of public accommodation, services | A-3 (1) | A-3 (1) | A-3 (1) ⁵ | A-3 (1) | A-3 (1) | A-3 (1) |
| Provision of commercial unit or housing | A-4 (1) | A-4 (1) ⁶ | A-4 (1) ⁷ | A-4 (1) | A-4 (1) | A-4 (1) |
| Property conveyance | A-5 | A-5 | A-5 | A-5 | A-5 | A-5 | A-5 | A-5 | A-5 | A-5 |
| Pay males and females | | | | | | | B-3 (1) | | | |

EXCEPTIONS

¹ Bona fide qualification for employment

² Operation of bona fide insurance, retirement, seniority plan

³ Free expression of opinion

⁴ Age of majority

Public decency

⁵ Preference for elderly

⁶ Occupancy of housing restricted to one sex (except for owner and family)

⁷ Identification of facilities customarily used by one sex

NON-APPLICATION OF ACT

⁸ Employment provisions not applicable to exclusively religious, philanthropic, educational, fraternal, or social organization not operated for profit

– Employment provisions not applicable to domestic employee or to be employed in single family residence

– Employment provisions not applicable to be employed or to be employed in single family residence

NEW BRUNSWICK

A. HUMAN RIGHTS CODE
**B. FEMALE EMPLOYEE FAIR
 REMUNERATION ACT**

| PRACTICE | DISCRIMINATION PROHIBITED | | | | | SEX |
|----------------------------------------------------------------------------------------------|---------------------------|---------|-----------------|----------------------|-----------------|----------------------|
| | RACE | COLOUR | NATIONAL ORIGIN | ANCESTRY | PLACE OF ORIGIN | |
| Employment, terms ¹ and conditions of operation of employment agency ² | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) |
| Pre-employment ¹ inquiries, use of application forms | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) |
| Membership, etc. ¹ in trade unions, employers organizations | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) |
| Provision of occupancy in commercial or dwelling unit | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) ³ |
| Conveyance of property | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) |
| Provision of public accommodation, services, facilities | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) ³ |
| Publishing signs ⁴ , notices, symbols, etc. | A-6 (1) | A-6 (1) | A-6 (1) | A-6 (1) | A-6 (1) | A-6 (1) ³ |
| Membership in trade, professional, business associations | A-7 (1) | A-7 (1) | A-7 (1) | A-7 (1) ⁵ | A-7 (1) | A-7 (1) |
| Pay of females | | | | | B-3 (1) | |

EXCEPTIONS

¹ Bona fide occupational qualification

² Operation of bona fide pension, retirement, insurance plan

³ Bona fide qualification as determined by commission

⁴ Free expression of opinion

⁵ Application of statutory restrictions limiting membership to Canadian citizens or British subjects

NEWFOUNDLAND HUMAN RIGHTS CODE

NEWFOUNDLAND

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | RELIGION | RELIGIOUS CREDENCE | SEX | POLITICAL OPINION | COLOUR | ETHNIC, NAT. OR SOCIAL ORIGIN | AGE 45-65 19 | MARITAL STATUS | ATTACHMENT SEIZURE, ETC. OF PAY |
|--------------------------------------------------------------------------------|--------|----------|--------------------|--------------------|-------------------|--------|-------------------------------|-----------------|----------------|---------------------------------------|
| Employment, terms ² and conditions of | 9 (1) | 9 (1) | 9 (1) | 9 (1) ¹ | 9 (1) | 9 (1) | 9 (1) | 9 (1) | 9 (1) | 9A (1) ⁴ |
| Use of employment agencies | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9A (2) ⁴ |
| Trade union ² membership | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9A (3) ⁴ |
| Advertisements ^{1,2} , application forms, enquiries re: employment | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9A (4) ⁴ |
| Pay of females and males | | | | 10 (1) | | | | | | |
| Provision of public accommodation, services, facilities | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | |
| Provision of commercial or dwelling units | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | |
| Publishing of signs ³ , symbols, emblems, etc. | 11 (1) | 11 (1) | 11 (1) | 11 (1) | 11 (1) | 11 (1) | 11 (1) | 11 (1) | 11 (1) | |

EXCEPTIONS

1. Bona fide occupational qualification

2. Operation of bona fide pension, retirement, employee insurance plan

3. Free expression of opinion

4. Where debts include collecting, receiving, or depositing of money belonging to employer

NON-APPLICATION OF ACT

— Employment practices section does not apply to:

a) Certain non profit organizations (religious, fraternal)

b) Domestic employee and living in private home

NOVA SCOTIA

A. HUMAN RIGHTS ACT
B. LABOUR STANDARDS CODE

| PRACTICE | RACE | RELIGION | DISCRIMINATION PROHIBITED | | | SEX | AGE (40-65) | PHYSICAL HANDICAP |
|----------------------------------------------------------------------------------------|--------------------|--------------------|---------------------------|--------------------|-----------------------|-----------|--------------------|--------------------|
| | | | CREED | COLOUR | ETHNIC OR NAT. ORIGIN | | | |
| Employment terms and conditions of classification, referral, etc. by employment agency | A-8 (1) A-8 (2) | A-8 (1) A-8 (2) | A-8 (1) A-8 (2) | A-8 (1) A-8 (2) | A-8 (1) A-8 (2) | A-11A (2) | A-11B ¹ | A-11B ² |
| Use of application forms, advertisements, pre-employment enquiries | A-8 (3) | A-8 (3) | A-8 (3) | A-8 (3) | A-8 (3) | | A-11B ¹ | A-11B ² |
| Pay of females | A-9 | A-9 | A-9 | A-9 | A-9 | A-11A (2) | A-11B ¹ | A-11B ² |
| Trade union membership | A-10 | A-10 | A-10 | A-10 | A-10 | A-11A (2) | A-11B ¹ | A-11B ² |
| Professional, trade, business association | A-11 (1) | A-11 (1) | A-11 (1) | A-11 (1) | A-11 (1) | A-11A (2) | A-11B ¹ | A-11B ² |
| Admission of applicants for volunteer services | | | | | | | | |
| • Publishing, signs ³ , notices, symbols, etc. | | | | | | | | |
| Associating with individuals or class of individuals | A-12A | A-12A | A-12A | A-12A | A-12A | | | |
| Provision of public services, facilities, accommodation | A-4 | A-4 | A-4 | A-4 | A-4 | | | |
| Property conveyance | A-6 | A-6 | A-6 | A-6 | A-6 | | | |
| Provision of housing ⁴ or commercial unit occupancy | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | | | |

EXCEPTIONS

1. Operation of bona fide pension, retirement, insurance plan
2. Bona fide qualification for employment, activity, association
3. Free expression of opinion
4. Where unit is single, non-advertised, non-listed room in dwelling the rest of which is occupied by landlord and family

NON-APPLICATION OF ACT

— Employment practices section does not apply to 1
a) Domestic employee and living in a private
b) Certain non-profit groups (religious, ethnic.)
— Volunteer services section does not apply to certain non-profit organizations (religious, ethnic.)

* Discrimination for any purpose prohibited (12 (1))

ONTARIO

A. ONTARIO HUMAN RIGHTS ACT
B. EMPLOYMENT STANDARDS ACT

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | CREED | COLOUR | NATIONALITY | ANCESTRY | PLACE OF ORIGIN | SEX | MARITAL STATUS | AGE (40-65) |
|--------------------------------------------------|----------|----------|----------|-------------|----------|-----------------|----------|-----------------------|-------------|
| Employment terms and conditions | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) |
| Advertising re: employment | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) |
| Use of application forms | A-4 (4) | A-4 (4) | A-4 (4) | A-4 (4) | A-4 (4) | A-4 (4) | | | |
| Referral, etc. by employment agency | A-4 (5) | A-4 (5) | A-4 (5) | A-4 (5) | A-4 (5) | A-4 (5) | A-4 (5) | A-4 (5) | A-4 (5) |
| Trade union membership | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) |
| Professional association membership | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) |
| Display of emblems ² , symbols, signs | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) |
| Provision of public accommodation, services | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) |
| Occupancy in housing or commercial units | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) |
| Pay of males | | | | | | | | B-25 (1) ⁵ | |
| Pay of females | | | | | | | | B-25 (1) ⁵ | |

EXCEPTIONS

1 Where bona fide qualification for employment

2 Free expression of opinion not interfered with

3 Public decency

4 Where occupancy other than for owner and family is restricted to persons of same sex

5 Where difference due to seniority, merit, quality, quantity, systems

NON-APPLICATION OF ACT

— Limitations re: employment do not apply to
a) religious, philanthropic, educational, fraternal or social organization not operated for profit
b) Domestic employee in private home

PRINCE EDWARD ISLAND

HUMAN RIGHTS CODE

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | RELIGION | RELIGIOUS CRED | COLOUR | ETHNIC OR NAT. ORIGIN | SEX |
|--------------------------------------------------------------------|-------|----------|----------------|--------|-----------------------|-------|
| Provision of public accommodation, services, facilities | 4 | 4 | 4 | 4 | 4 | 4 |
| Provision of dwelling occupancy | 5 | 5 | 5 | 5 | 5 | 5 |
| Employment, terms and conditions | 6 (1) | 6 (1) | 6 (1) | 6 (1) | 6 (1) | 6 (1) |
| Use of employment agencies | 6 (2) | 6 (2) | 6 (2) | 6 (2) | 6 (2) | 6 (2) |
| Trade union membership | 6 (3) | 6 (3) | 6 (3) | 6 (3) | 6 (3) | 6 (3) |
| Use of application forms, advertisements, pre-employment enquiries | 6 (4) | 6 (4) | 6 (4) | 6 (4) | 6 (4) | 6 (4) |
| Pay of females | 8 (1) | 8 (1) | 8 (1) | 8 (1) | 8 (1) | 8 (1) |
| Publication of signs ¹ , symbols, emblems, etc. | | | | | | |

EXCEPTIONS

¹ Free expression of opinion

NON-APPLICATION OF ACT

- Employment related section does not apply to
 - a) Domestic employee in private dwelling
 - b) Certain non-profit social, religious, fraternal, etc. organizations

QUEBEC

A. EMPLOYMENT DISCRIMINATION ACT
B. THE HOTELS ACT

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | COLOUR | SEX | RELIGION | NATIONAL EXTRACTION | SOCIAL ORIGIN | BELIEFS | NATIONALITY | ETHNIC ORIGIN | PLACE OF BIRTH |
|-----------------------------------------------------------------------------------------------|------------|------------|------------|------------|---------------------|---------------|------------|-------------|---------------|----------------|
| Employment terms and conditions of Membership in employer or employee association | A-2 A-3 | A-2 A-3 | A-2 A-3 | A-2 A-3 | A-2 A-3 | A-2 A-3 | A-2 A-3 | A-2 A-3 | A-2 A-3 | |
| Advertising re: employment | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | |
| Pre-employment enquiries | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | |
| Provision of lodging, food, other services by hotel, restaurant, camp ground, trailer park | B-8 | B-8 | B-8 | B-8 | B-8 | B-8 | B-8 | B-8 | B-8 | B-8 |

NON-APPLICATION OF ACTS

- Employment discrimination provisions not applicable to:

- Employer with fewer than five employees
- Non-profit association or corporation operate for exclusively religious, philanthropic, educational, charitable or social objects, or devoted to welfare of a religious or ethnic group
- Manager, superintendent, foreman or representative of the employer in his relations with his employees
- Director or officer of a corporation
- Domestic servant

SASKATCHEWAN

A. SASKATCHEWAN BILL OF RIGHTS ACT
 B. FAIR EMPLOYMENT PRACTICES ACT
 C. FAIR ACCOMMODATION PRACTICES ACT

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | RELIGION | RELIGIOUS CREED | COLOUR | SEX | NATIONALITY | ANCESTRY | PLACE OF ORIGIN |
|--------------------------------------------------------------------------------------|---------------------|-------------------|-------------------|------------|-------------------|-------------------|-------------------|-------------------|
| Employment, terms and conditions of use of employment agencies that discriminate | B-3 B-4 | B-3 B-4 | B-3 B-4 | B-3 B-4 | B-3 B-4 | B-3 B-4 | B-3 B-4 | B-3 B-4 |
| Membership in trade unions | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 |
| Use of employment ¹ applications, advertisements pre-employment enquiries | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 |
| Carrying on any business, enterprise, occupation | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 |
| Ownership, occupancy of land | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 |
| Membership in professional, trade associations | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 |
| Enrolment in educational institution | A-11 | A-11 ² | A-11 ² | A-11 | A-11 ² | A-11 ² | A-11 ² | A-11 ² |
| Publication, display ³ of signs, symbols, emblems | A-12 (1) C-4 (1) | A-12 (1) | A-12 (1) | A-12 (1) | A-12 (1) | A-12 (1) | A-12 (1) | A-12 (1) |
| Provision of public accommodation, facilities, services | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 |

EXCEPTIONS

¹ Bona fide occupational qualification
² School that:

- a) is run by religious order or society
- b) enrolls a particular sex, creed, religion exclusively

³ Free expression of opinion

NON-APPLICATION OF ACTS

— Fair employment practices act not applicable to employer who is non-profit charitable, philanthropic, fraternal, religious, social organization, or an organization (non-profit) operated for welfare of religious or racial group

FAIR PRACTICES ORDINANCE

NORTHWEST TERRITORIES

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | CREED | COLOUR | SEX | MARITAL STATUS | NATIONALITY | ANCESTRY | PLACE OF ORIGIN | PLACE OF RESIDENCE |
|------------------------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Employment, terms and conditions of | 3 (1) ¹ | 3 (2) |
| Employment application forms, advertisements, pre-employment enquiries | 3 (3) | 3 (3) | 3 (3) | 3 (3) | 3 (3) | 3 (3) | 3 (3) | 3 (3) | |
| Trade union membership | 3 (4) | 3 (4) | 3 (4) | 3 (4) | 3 (4) | 3 (4) | 3 (4) | 3 (4) | |
| Provision of public accommodation, facilities, services | 4 (1) | 4 (1) | 4 (1) | 4 (1) | 4 (1) | 4 (1) | 4 (1) | 4 (1) | |
| Provision of self-contained dwelling units, terms of occupancy | 4 (2) | 4 (2) | 4 (2) | 4 (2) | 4 (2) | 4 (2) | 4 (2) | 4 (2) | |
| Publication of ² signs, notices, emblems, etc. | 5 (1) | 5 (1) | 5 (1) | 5 (1) | 5 (1) | 5 (1) | 5 (1) | 5 (1) | |
| Pay of females | | | | | 6 (1) | | | | |

EXCEPTIONS

¹ Bona fide occupational qualification
² Free expression of opinion

NON-APPLICATION OF ORDINANCE

— Employment discrimination provisions do not apply to:
 a) Domestic in private home
 b) Non-profit charitable, philanthropic, educational, fraternal, religious, social organizations or organizations operated primarily to foster welfare of a religious or racial group
 c) School or board of trustees (e.g. hiring where religious instruction included in curriculum)

YUKON TERRITORY

A. FAIR PRACTICES ORDINANCE
B. LABOUR STANDARDS ORDINANCE

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | RELIGION | RELIGIOUS CRED | COLOUR | ANCESTRY | SEX | MARITAL STATUS | ETHNIC OR NAT. ORIGIN |
|-------------------------------------------------------------------------------------------------|---------|----------|----------------|---------|----------|----------------------|----------------|-----------------------|
| Employment ¹ , terms and conditions of | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) |
| Use of application ¹ forms | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) |
| Trade union membership | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) |
| Provision of public accommodation, services, facilities | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) ² | A-4 (1) | A-4 (1) |
| Provision of occupancy in self-contained dwelling units | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) ² | A-4 (2) | A-4 (2) |
| Publication in newspapers or display on property one controls, of signs, symbols, emblems, etc. | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) |
| Pay of females | | | | | | B-12.1 (1) | | |
| Pay of males | | | | | | B-12.1 (1) | | |

NON-APPLICATION OF ACTS

EXCEPTIONS

- 1 Bona fide qualification for employment
- 2 Accommodation, services, facilities restricted to persons of same sex

- Employment practices section of fair practices ordinance not applicable to

- a) Domestic service in private home
- b) Non-profit charitable, philanthropic, educational, fraternal, religious, social organization or organizations for welfare of a religious or racial group
- c) School board or trustees, where religious instruction in curriculum

- Occupancy provisions do not apply to apartment buildings with less than seven self-contained units

CANADIAN BILL OF RIGHTS

An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms

8-9 Elizabeth II, c. 44 (Canada)

[Assented to 10th August 1960]

Preamble

The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PART I

BILL OF RIGHTS

Recognition and declaration of rights and freedoms

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and

DÉCLARATION CANADIENNE DES DROITS

Loi ayant pour objets la reconnaissance et la protection des droits de l'homme et des libertés fondamentales

8-9 Elizabeth II, c. 44 (Canada)

[Sanctionnée le 10 août 1960]

Préambule

Le Parlement du Canada proclame que la nation canadienne repose sur des principes qui reconnaissent la suprématie de Dieu, la dignité et la valeur de la personne humaine ainsi que le rôle de la famille dans une société d'hommes libres et d'institutions libres;

Il proclame en outre que les hommes et les institutions ne demeurent libres que dans la mesure où la liberté s'inspire du respect des valeurs morales et spirituelles et du règne du droit;

Et afin d'expliquer ces principes ainsi que les droits de l'homme et les libertés fondamentales qui en découlent, dans une Déclaration de droits qui respecte la compétence législative du Parlement du Canada et qui assure à sa population la protection de ces droits et de ces libertés,

En conséquence, Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète :

PARTIE I

DÉCLARATION DES DROITS

Reconnaissance et déclaration des droits et libertés

1. Il est par les présentes reconnu et déclaré que les droits de l'homme et les libertés fondamentales ci-après énoncés ont existé et continueront à exister pour tout individu au Canada quels que soient sa race, son origine

fundamental freedoms, namely,

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association; and
- (f) freedom of the press.

Construction of
law

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

- (a) authorize or effect the arbitrary detention, imprisonment or exile of any person;
- (b) impose or authorize the imposition of cruel and unusual treatment or punishment;
- (c) deprive a person who has been arrested or detained
 - (i) of the right to be informed promptly of the reason for his arrest or detention,
 - (ii) of the right to retain and instruct counsel without delay, or
 - (iii) of the remedy by way of *habeas corpus* for the determination of the validity of his detention and for his release if the detention is not lawful;
- (d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards;
- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or

nationale, sa couleur, sa religion ou son sexe :

- a) le droit de l'individu à la vie, à la liberté, à la sécurité de la personne ainsi qu'à la jouissance de ses biens, et le droit de ne s'en voir privé que par l'application régulière de la loi;
- b) le droit de l'individu à l'égalité devant la loi et à la protection de la loi;
- c) la liberté de religion;
- d) la liberté de parole;
- e) la liberté de réunion et d'association, et
- f) la liberté de la presse.

2. Toute loi du Canada, à moins qu'une loi du Parlement du Canada ne déclare expressément qu'elle s'appliquera nonobstant la *Déclaration canadienne des droits*, doit s'interpréter et s'appliquer de manière à ne pas supprimer, restreindre ou enfreindre l'un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s'interpréter ni s'appliquer comme

Interprétation
de la législation

- a) autorisant ou prononçant la détention, l'emprisonnement ou l'exil arbitraires de qui que ce soit;
- b) infligeant des peines ou traitements cruels et inusités, ou comme en autorisant l'imposition;
- c) privant une personne arrêtée ou détenue
 - (i) du droit d'être promptement informée des motifs de son arrestation ou de sa détention,
 - (ii) du droit de retenir et constituer un avocat sans délai, ou
 - (iii) du recours par voie d'*habeas corpus* pour qu'il soit jugé de la validité de sa détention et que sa libération soit ordonnée si la détention n'est pas légale;
- d) autorisant une cour, un tribunal, une commission, un office, un conseil ou une autre autorité à contraindre une personne à témoigner si on lui refuse le secours d'un avocat, la protection contre son propre témoignage ou l'exercice de toute garantie d'ordre constitutionnel;
- e) privant une personne du droit à une audience impartiale de sa cause, selon les principes de justice fondamentale, pour la définition de ses droits et obligations;
- f) privant une personne accusée d'un acte

Part II

Bill of Rights

3

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.

criminel du droit à la présomption d'innocence jusqu'à ce que la preuve de sa culpabilité ait été établie en conformité de la loi, après une audition impartiale et publique de sa cause par un tribunal indépendant et non préjugé, ou la privant sans juste cause du droit à un cautionnement raisonnable ; ou

g) privant une personne du droit à l'assistance d'un interprète dans des procédures où elle est mise en cause ou est partie ou témoin, devant une cour, une commission, un office, un conseil ou autre tribunal, si elle ne comprend ou ne parle pas la langue dans laquelle se déroulent ces procédures.

Duties of
Minister of
Justice

3. The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the *Regulations Act* and every Bill introduced in or presented to the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

Short title

4. The provisions of this Part shall be known as the *Canadian Bill of Rights*.

Savings

5. (1) Nothing in Part I shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of this Act.

"Law of
Canada"
defined

(2) The expression "law of Canada" in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada.

Devoir du
ministre de la
Justice

3. Le ministre de la Justice doit, en conformité de règlements prescrits par le gouverneur en conseil, examiner toute proposition de règlement soumise, sous forme d'avant-projet, au greffier du Conseil privé, selon la *Loi sur les règlements*, comme tout projet ou proposition de loi soumis ou présenté à la Chambre des communes, en vue de constater si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la présente Partie, et il doit signaler toute semblable incompatibilité à la Chambre des communes dès qu'il en a l'occasion.

Titre abrégé
doivent être connues sous la désignation:
Déclaration canadienne des droits.

PART II

PARTIE II

Clause de
sauvegarde

5. (1) Aucune disposition de la Partie I ne doit s'interpréter de manière à supprimer ou restreindre l'exercice d'un droit de l'homme ou d'une liberté fondamentale non énumérés dans ladite Partie et qui peuvent avoir existé au Canada lors de la mise en vigueur de la présente loi.

Définition: «lo
du Canada»

(2) L'expression «loi du Canada», à la Partie I, désigne une loi du Parlement du Canada, édictée avant ou après la mise en vigueur de la présente loi, ou toute ordonnance, règle ou règlement établi sous son régime, et toute loi exécutoire au Canada ou dans une partie du Canada lors de l'entrée en application de la présente loi, qui est susceptible d'abrogation, d'abolition ou de modification par le Parlement du Canada.

Déclaration des droits

Partie II

Jurisdiction of
Parliament

(3) The provisions of Part I shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada.

(3) Les dispositions de la Partie I doivent s'interpréter comme ne visant que les matières qui sont de la compétence législative du Parlement du Canada.

Jurisdiction du
Parlement

VII APPENDIX B

Acts

| | |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | Canada Labour Code, Part I (Fair Employment Practices) R.S.C., 1970, CL-1; and Part III (Standard Hours, Wages, Vacations and Holidays). |
| Alberta | <u>The Individual's Rights Protection Act</u> , S.A. 1972, c. 2; as amended 1973 c. 61. |
| British Columbia | <u>Human Rights Code of British Columbia</u> , S.B.C., c. 119; as amended 1974, c. 87. |
| Manitoba | <u>The Human Rights Act</u> , C.C.S.M., CH 175, enacted by S.M. 1974, c. 65. |
| | <u>The Equal Pay Act</u> , R.S.M. 1970, C.E. 130; as amended 1971, c. 62 and 1972 c. 47. |
| New Brunswick | <u>Human Rights Code</u> , R.S.N.B. 1973, c. H-11. |
| | <u>Female Employees Fair Remuneration Act</u> , R.S.N.B. 1973, c. F-9. |
| Newfoundland | <u>The Newfoundland Human Rights Code</u> , R.S.N. 1970, c. 262; as amended 1973, Act No. 34 and 1974, Bill 114. |
| Nova Scotia | <u>Human Rights Act</u> , S.N.S. 1969, c. 11; as amended 1970, c. 85; 1971, c. 69, 1972, c. 65; and 1974, c. 46. |
| | <u>Labour Standards Code</u> , S.N.S. 1972, c. 10; as amended 1974, c. 29. |
| Ontario | <u>The Ontario Human Rights Code</u> , R.S.O. 1970, c. 318; as amended 1971, c. 50, s. 63; 1972, c. 119; and 1974, c. 73 |
| | <u>The Employment Standards Act</u> , 1974, S.O. 1974, c. 112. |

| | |
|-----------------------|--------------------------------------------------------------------------------------------------|
| Prince Edward Island | <u>Human Rights Code, S.P.E.I.</u> 1968, c. 24. |
| Québec | <u>Employment Discrimination Act, R.S.Q.</u> 1964, c. 142. |
| | <u>The Hotels Act, R.S.Q.</u> 1964, c. 205, as amended, S.Q. 1969, c. 59. |
| Saskatchewan | <u>The Saskatchewan Human Rights Commission Act, S.S.</u> 1972, c. 108, as amended 1973, c. 94. |
| | <u>The Fair Employment Practices Act, R.S.S.</u> 1965, c. 293; as amended 1972, c. 43. |
| | <u>The Fair Accommodation Practices Act, R.S.S.</u> 1965, c. 379; as amended, S.S. 1972, c. 42 |
| | <u>The Saskatchewan Bill of Rights Act, R.S.S.</u> 1965, c. 378; as amended, S.S. 1972, c. 104. |
| Northwest Territories | <u>Fair Practices Ordinance, O.N.W.T.</u> 1966, c. 5; as amended 1974, c. 4. |
| Yukon Territory | <u>Fair Practices Ordinance, R.O.Y.T.</u> 1971, c. F-2; as amended 1974, c. 7. |
| | <u>Labour Standards Ordinance, R.O.Y.T.</u> 1971, c. L-1; as amended 1973, c. 13; and 1974 c. 9. |



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Legislative Research

CANADA DEPARTMENT OF LABOUR

Hon. John Munro
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T.M. Eberlee
Deputy-Minister

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INDEX

CONTENTS

| | Page |
|-----------------------------------------------------------------------------------|------|
| I Federal and Provincial Jurisdiction Over Human Rights | 1 |
| II The Canadian Bill of Rights | 2 |
| III Major Legislative Developments During 1975 | 4 |
| IV Analysis of Legislation | 7 |
| 1. General | 7 |
| (a) Publications, Signs, Display of Various Representations | 7 |
| (b) Public Accommodations, Services, Facilities | 8 |
| (c) Association with Minority Groups | 9 |
| (d) Contracts | 10 |
| 2. Employment and Employment-Related Subjects | 10 |
| (a) Employers | 10 |
| (b) Employment Agencies | 13 |
| (c) Application Forms, Advertisements and Inquiries in Connection with Employment | 13 |
| (d) Trade Unions | 16 |
| (e) Employers' Associations | 18 |
| (f) Professional, Business and Trade Associations | 18 |
| (g) Equal Pay | 19 |
| 3. Occupancy, Property Sales | 24 |
| (a) Occupancy | 24 |
| (b) Conveyance of Property | 26 |
| 4. Where the Acts do not Apply | 27 |
| 5. Special Programs | 27 |
| 6. Protection of Complainants | 28 |
| 7. Administration of Acts | 30 |
| 8. Human Rights Commissions | 30 |
| 9. Enforcement - Initiation | 31 |

| | Page |
|---------------------------------------------|------|
| 10. Enforcement - Inquiries | 32 |
| 11. Enforcement - Orders | 34 |
| 12. Prosecution and Penalties | 35 |
| V Tables | 37 |
| VI Appendix A - The Canadian Bill of Rights | |
| VII Appendix B - Acts | |

Foreword

Two new human rights Acts were passed in Canada during 1975.

Prince Edward Island passed the Human Rights Act, which repeals the Human Rights Code of 1968. Two major features of the new Act are an extension of the grounds upon which discrimination is prohibited and provision for a Human Rights Commission.

Québec passed its Charter of Human Rights and Freedoms. The first part of the Charter enumerates human rights and freedoms, while the second part provides for a "Commission des droits de la personne". The Act is broad in scope by outlining "positive" rights and freedoms and specific in prohibiting discrimination in various Acts on specified grounds.

Outlines of both Acts follow.

The present publication of Human Rights in Canada was authored by Cal McKerral. Production was co-ordinated by Allan Nodwell.

J.P. Whitridge,
Acting Director,
Library and Information Services.

I - FEDERAL AND PROVINCIAL JURISDICTION OVER HUMAN RIGHTS

Sections 91 and 92 of the British North America Act, which provide for the division of legislative powers between the Parliament of Canada and the provincial Legislatures, make no express mention of the words "human rights" or "civil liberties".

The question therefore arises as to which of the two levels of government - the federal Government or the provincial Governments - has jurisdiction over human rights.

In order to determine who has jurisdiction over human rights, it is, first, necessary to classify them so as to make possible the distribution of legislative power between the federal and provincial Governments according to the different types of human rights.

Human rights can be classified as follows: "political rights" - traditionally including freedom of association, assembly, speech, press and religion; "economic rights" - the right to own property, and the right not to be deprived thereof without compensation, freedom of contract, the right to withhold one's labour, etc.; "legal rights" - freedom from arbitrary arrest, right to a fair hearing, right to counsel, etc.; "egalitarian rights" - right to employment, accommodation, education, and so on, without discrimination by reason of race, colour, sex, creed, etc.

It is generally recognized that political rights, in the sense of "public rights", are essentially within the competence of the Parliament of Canada. A distinction must be made, however, between the "restriction" and "protection" of such rights. The federal Parliament appears to have the sole authority to restrict political rights on the basis of its jurisdiction over criminal law (Saumur v. The City of Québec (1953), 2 S.C.R. 299; Henry Birks & Sons v. The City of Montreal (1955), S.C.R. 799; Switzman v. Elbling (1957), S.C.R. 285). The provincial Legislatures are competent, however, to protect political rights, by virtue of their jurisdiction over civil rights within the province (Oil, Chemical Workers International Union v. Imperial Oil Ltd. (1963), S.C.R. 584). But it is equally of the competence of the federal Parliament to deal with the protection of political rights by legislating in relation to matters falling within its jurisdiction (i.e., the 1960 Canadian Bill of Rights).

As regards the economic, legal and egalitarian rights, they are subject to either federal or provincial jurisdiction, or to both concurrently, depending on whether the activities with which those rights are connected are themselves within the legislative competence of the federal Parliament or of the provincial Legislatures.

II - THE CANADIAN BILL OF RIGHTS

The Canadian Bill of Rights became law on August 10, 1960. Unlike the American Bill of Rights, it is not included in nor does it form part of the Constitution (i.e., the British North America Act). Furthermore, the Canadian Bill of Rights applies only to federal legislation; it has no effect on provincial laws. Under it, any federal law infringing one of the declared rights and freedoms shall be declared inoperative. This sanction, however, does not apply to those laws which expressly provide that they shall operate notwithstanding the Canadian Bill of Rights.

The Canadian Bill of Rights declares and recognizes that the following human rights and freedoms exist: freedom of religion, speech, assembly, association and the press; the right to equality before the law and the protection of the law; the right to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law. The above rights and freedoms exist without discrimination by reason of race, national origin, colour, religion or sex. The Bill of Rights also guarantees such rights as the right to counsel and a fair hearing, the presumption of innocence, protection against cruel punishment, the right to an interpreter and certain rights of an arrested person.

However, the Canadian Bill of Rights has not, in practice, had any substantive effect. In most cases where the Bill was invoked the courts held that it did not apply. Canadian appellate courts, in particular, have treated the Bill as, at the most, providing rules for construction of federal legislation. This has been so notwithstanding the retroactive character of the Bill of Rights in its declaration that no law of Canada may derogate from it unless so expressly declared, and notwithstanding also the direction to the courts to construe and apply federal legislation so as not to infringe the declared rights and freedoms.

On the whole, there have been strong judicial views expressed that the Parliament of Canada did not intend, by enacting the Bill of Rights, to alter its own previously enacted laws which may be in conflict with the Bill. The Courts have said instead that the Parliament of Canada would have included a proviso in the Bill itself that it was its will to render the Bill applicable to federal laws passed prior to the Bill's enactment.

The limited scope of application of the Canadian Bill of Rights, and its resulting ineffectiveness in protecting human rights, gave rise, a few years ago, to a suggestion by the federal Government that the fundamental rights of all Canadians would be more effectively guaranteed by a constitutionally entrenched Bill of Rights. Such an amendment to our Constitution would declare invalid any existing or future law inconsistent with the Bill. Suffice it to say that this proposal of the federal Government did not meet with the provincial Governments' approval, a condition precedent to any constitutional change.

That proposal, and others made in recent years, have one thing in common: all point to the need for protecting human rights more effectively than presently does the Canadian Bill of Rights. Major disagreements still exist, however, with regard to the best mutually acceptable method of providing such protection.

III - MAJOR LEGISLATIVE DEVELOPMENTS DURING 1975

An important development in the field of human rights legislation in Canada during 1975 was Québec's passage of the Charter of Human Rights and Freedoms.

The first part of the Charter enumerates human rights and freedoms, while the second part provides for the establishment of a "Commission des droits de la personne".

In the first chapter of Part I, under the heading of "general provisions", fundamental rights and freedoms of the individual are enumerated, namely, the right to life and to personal security, inviolability, freedom and the possession of juridical personality, the right to assistance, the fundamental freedoms, such as the freedom of conscience and the freedom of expression and the right to the safeguard of one's dignity, to respect for one's private life, to the protection of one's property and to professional secrecy.

Several provisions deal particularly with discrimination based on race, colour, sex, civil status, religion, political convictions, language or on ethnic or national origins or social condition. Discriminatory publicity is prohibited, just as is discrimination in the making or the carrying out of any juridical act, excepting the lease of a room situated in a dwelling. Similarly, public places and public transportation are available to everyone without distinction or preference. Finally, all discrimination is prohibited in the entire sector of labour, and the principle of equal salary or wages for equivalent work for the same concern is officially recognized.

Following chapter II, where certain political rights are enumerated, such as the right of petition to the National Assembly and the right to vote or to be a candidate at an election, chapter III deals with judicial rights.

Thus, every person has a right to an impartial hearing of his case by an independent tribunal. No one may be deprived of his liberty except on grounds recognized and provided by laws.

Similarly, every person arrested or detained has the right to be treated with human dignity and respect, to receive separate treatment according to sex, age, and mental or physical condition, to be separated from the prisoners serving sentences while awaiting the outcome of a trial and to be promptly informed of the grounds of arrest, as well as the right to advise the next of kin, to retain counsel or to be, without delay, brought before a tribunal.

The right to be released on recognizance while awaiting trial and the right to habeas corpus as well as to the presumption of innocence are recognized as are the services of an interpreter. The non-retroactivity of the law is also a principle recognized in the Charter.

From a different perspective, certain economic and social rights are enumerated and recognized in chapter IV, namely, the right to free public instruction, to the establishment and maintenance of private educational establishments, the right, for minorities, to develop their cultural interest, the right to information, the right, for every person, to exercise his profession or trade on fair and reasonable conditions, the equality of husband and wife in the marriage and the right of aged persons or of infirm or mentally ill persons to be protected against all form of exploitation.

Chapter V comprises special provisions on the interpretation and application of the laws with regard to the Charter and concerning the right of every person whose fundamental rights are interfered with to claim an indemnity or to obtain an injunction. Part II of the Charter establishes a "Commission des droits de la personne" whose members are appointed by the National Assembly, whose employees are not members of the civil service and whose functions will be, in particular to promote the Charter, to investigate matters within its competence, analyse existing laws which could be inconsistent with the Charter and establish a program of research and education in the field of human rights. The commission will receive any complaint relating to a right recognized in sections 10 to 19 or in the first paragraph of section 48 whether the complaint emanates from an individual or from a group of persons. The commission will then endeavour to bring the parties to an agreement.

It may recommend the cessation of the act complained of, the performance of an act or the payment of an indemnity within the delay it fixes.

If the author of the discrimination does not comply with the recommendation issued by the commission, the commission itself may proceed before the courts.

Part III of the Act outlines offences and penalties. Action for contravention of the anti-discrimination, anti-destruction and anti-reprisal provisions is to be taken under the Summary Conviction Act.

Also, if a corporation commits an offence under the Charter, any officer, director, employee or representative of that corporation who prescribed or authorized the offence, or who consented, acquiesced or participated in it, is deemed to be a party to the offence whether or not the corporation has been prosecuted or found guilty.

The Charter repeals:

- (a) The Employment Discrimination Act;
- (b) Section 8 of the Hotels Act (discrimination in public accommodation);
- (c) Section 46 of the Manpower Vocational Training and Qualification Act (discrimination in manpower training);
- (d) Articles 1664i and 1664s of the Civil Code (discrimination in terms of leases).

Government officials cannot be obliged to divulge what has been revealed to them in the exercise of their functions if a judge is of the opinion that such a disclosure would be contrary to public order.

Sections 11 (discriminatory publishing, notice, sign, symbol, etc.,), 13 (discriminatory clause in a juridical act) and 19 (equal pay) do not apply to life insurance, retirement plans, pension plans, or any other plan or scheme of social benefits when discrimination is founded on actuarial data based on sex or civil status.

Another major development during 1975 was Prince Edward Island's new Human Rights Act. Under the new Act the grounds upon which discrimination is prohibited are extended. Now, the term "discrimination" throughout the Act means discrimination in relation to the race, religion, creed, colour, sex, marital status, ethnic or national origin or political belief of any individual or class of individuals.

Previously, anti-discrimination provisions existed on grounds of race, religion, religious creed, and ethnic or national origin. Sex discrimination prohibitions existed only in the area of equal pay.

Another important expansion in the anti-discrimination provisions is the addition of age (18-65 years) and physical handicap as prohibited grounds for discrimination in employment and employment related areas (equal pay, union membership, trade or professional association membership and agencies) (including ones using volunteers) which carry out a public function.

The Act provides for the establishment of a three-member human rights commission. The commission is responsible for the administration and enforcement of the Act, and for the development of a program of public information and education in the field of human rights. The commission may also approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals. Such approved programs shall be deemed not to be a violation of the Act.

IV - ANALYSIS OF LEGISLATION

1. General

(a) Publications, Signs, Display of Various Representations

All jurisdictions in Canada except the federal have enacted prohibitions against publication or display of discriminatory signs, symbols, and other representations.

Further, the provisions include (except for Alberta and British Columbia) a prohibition against permitting others to do so. This would apply in a case where, for example, one person allowed another to place a discriminatory sign on land which the former owned or controlled.

The jurisdictions which prohibit these practices and the grounds upon which the discrimination is prohibited, are listed below.

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|--------------------------------------------------------------------------------------------------------------------------|
| Alberta | race, religion, beliefs, colour, sex, age (45-65), ancestry, place of origin |
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin, political belief |
| Manitoba | race, nationality, religion, colour, sex, marital status, ethnic or national origin |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | any purpose |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status |
| P.E.I. | race, religion, creed, colour, ethnic or national origin, sex, marital status, political belief |
| Québec | race, colour, sex, civil status, religion, political convictions, language, ethnic or national origins, social condition |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |

| | |
|-----------------------|---------------------------------------------------------------------------------------------------|
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

All of the jurisdictions listed above (except the Yukon) state explicitly that the prohibition against discriminatory publications, signs, etc., is not meant to limit the free expression of opinion.

Alberta allows a sign, display, etc., to express any bona fide qualification for employment, and states also, as does Manitoba, that identification of facilities customarily used by one sex does not violate the provision.

New Brunswick allows exceptions based on bona fide qualifications pertinent to sex or marital status, as determined by the Human Rights Commission.

Québec's guarantee of freedom of expression is contained in an early section of the general provisions of the Charter of Human Rights and Freedoms.

(b) Public Accommodations, Services, Facilities

All jurisdictions except the federal have enacted prohibitions against discrimination in the areas of public accommodations, services, and other public facilities.

The jurisdictions which have enacted provisions in the areas mentioned, and the grounds upon which discrimination is prohibited are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|-------------------------------------------------------------------------------------------------------------------------|
| Alberta | race, religious beliefs, colour, sex, ancestry, place of origin |
| British Columbia | race, religion, colour, sex, ancestry, place of origin (The grounds listed are not intended by the Act to be limiting.) |
| Manitoba | race, nationality, religion, colour, sex, age, ethnic or national origin |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |

| | |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------|
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, sex |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status |
| P.E.I. | race, religion, creed, colour, ethnic or national origin, sex, marital status, political belief |
| Québec | race, colour, sex, civil status, religion, political convictions, language, ethnic or national origin, social condition |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

British Columbia, Manitoba, and Ontario allow exceptions to the prohibition of the provision of public accommodations, services, or other facilities on the grounds of sex, where public decency is at issue.

British Columbia also allows an exception on grounds of sex for purposes of determining insurance benefits or premiums.

In the Yukon, discrimination on the grounds of sex is excepted where the accommodation, service, or facilities are customarily used by one sex.

In New Brunswick, discrimination on the grounds of sex and marital status is excepted where there is a bona fide qualification, as determined by the Commission.

(c) Association with Minority Groups

Two jurisdictions, i.e., Nova Scotia, and Prince Edward Island, provide a comprehensively worded prohibition against discrimination because of a person's association with minority groups. The Nova Scotia prohibition reads:

"No person shall discriminate against any individual or class of individuals in any manner prescribed by this Act because of the race, religion, creed, colour or ethnic or national origin of any person or persons with whom the individual or class of individuals associates."

The Prince Edward Island section is similar, but with the added grounds of sex, marital status and political belief.

Alberta prohibits discrimination in employment practices against any person because of the race, etc., of that person or of any other person.

New Brunswick prohibits discrimination because of race, etc., without referring to a particular person.

(d) Contracts

Manitoba prohibits discrimination in the making available, and in the terms and conditions of, contracts offered to the public generally.

The grounds upon which discrimination is forbidden are race, nationality, religion, colour, sex, age, marital status, and ethnic or national origin. Where a condition based on age is concerned, however, the operation of a bona fide insurance, retirement, or seniority plan is not affected.

Québec provides that no one may in a juridical act stipulate a clause involving discrimination (i.e., race, sex, colour, civil status, religion, political convictions, language, ethnic or national origins, social conditions). Such a clause is considered to be without effect.

In British Columbia and Alberta, regulations may be made requiring that contracts with the Crown, municipalities, school boards, and hospital boards contain clauses which ensure no discrimination be allowed in accordance with the Human Rights Acts of those provinces.

2. Employment and Employment-Related Subjects

(a) Employers

All jurisdictions in Canada have enacted prohibitions against discrimination in employment practices. The wording of the prohibitions varies somewhat from one jurisdiction to another, but in essence all the Acts say that discrimination is prohibited in the actual engaging of a person for work, and also in the terms and conditions of that person's being employed. This includes such matters as promotion, transfer, etc.

The term "employer" in most cases includes those such as employers' organizations, employment agencies, and others, i.e., individuals, corporations or organizations which act on behalf of employers.

The jurisdictions and the various grounds upon which discrimination in employment is prohibited are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | race, national origin, colour, religion |
| Alberta | race, religious beliefs, colour, sex, age (45-65), ancestry, place of origin, marital status |
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin, political belief (The grounds enumerated here are not meant to be limiting.) |
| Manitoba | race, nationality, religion, colour, sex, age, marital status, ethnic or national origin, political beliefs |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, sex, political opinion, colour, ethnic, national or social origin, age (19-65), assignment, attachment or seizure of pay |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, age (40-65), physical handicap, sex |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status, age (40-65) |
| P.E.I. | race, religion, creed, colour, ethnic or national origin, sex, marital status, political belief, age (18-65), physical handicap |
| Québec | race, colour, sex, religion, civil status, political convictions, language, ethnic or national origin, social condition |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin, place of residence |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

Alberta, New Brunswick, Newfoundland and the Yukon allow an exception to all the prohibited grounds enumerated where there is a bona fide qualification for employment. Alberta also allows an exception on grounds of age or marital status, where the operation of a bona fide insurance or pension plan is concerned.

British Columbia allows an exception on the grounds of sex where public decency is concerned, and on the basis of age (45-65) where the operation of a bona fide insurance, pension or seniority plan is involved. British Columbia also allows exceptions where a criminal or summary conviction relates to the employment and where any act respecting Canadian citizenship constitutes reasonable cause.

Manitoba allows exceptions where age, marital status or political beliefs constitute a bona fide qualification for employment, and where age must be considered in the operation of a bona fide insurance, retirement or seniority plan. The age of majority is also valid grounds for exception.

In New Brunswick, age is grounds for exception where the operation of a bona fide pension, retirement or insurance plan is concerned.

Newfoundland allows an exception where sex is a bona fide occupational qualification.

Nova Scotia provides that age is a valid exception in the case of the operation of a bona fide pension, retirement or insurance plan, and that physical handicap may be taken into account where handicap relates to a bona fide qualification for employment.

Ontario allows that sex, marital status and age (40-65) may be taken into account where a bona fide qualification for employment is concerned.

Newfoundland allows an exception to the rule regarding attachment or seizure of pay where the employees' duties would include collecting or depositing money belonging to the employer.

Prince Edward Island allows exceptions for an exclusively religious or ethnic organization not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin as the case may be. Also, bona fide retirement, pension, or group insurance plans are not affected with respect to physical handicap or age.

Québec allows exceptions for charitable, philanthropic, religious or educational nature of a non-profit institution, or institutions devoted exclusively to the well-being of ethnic groups.

In the Northwest Territories, all enumerated grounds except "place of residence" may be taken into account as being a bona fide occupational qualification.

(b) Employment Agencies

The Canada Labour Code and the Acts of Newfoundland and Saskatchewan forbid an employer, in the having or recruitment of persons for employment, to use an employment agency that practices discrimination against persons seeking employment. All these provisions are similar.

In New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Québec, the employment agency is specifically forbidden to discriminate against any person seeking employment.

Prince Edward Island also forbids employment agencies from accepting discriminatory inquiries from any employer or prospective employee.

(c) Application Forms, Advertisements and Inquiries in Connection with Employment

All the Acts, except Québec, with some differences in wording, prohibit any person from using or circulating an application form or from publishing an advertisement in connection with employment or prospective employment or from making any written or oral inquiry in connection with employment that expresses either directly or indirectly any limitation, specification or preference as to the grounds on which discrimination is prohibited under the various Acts.

Several of the Acts (Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Saskatchewan and Northwest Territories) add to the provision summarized above a specific prohibition against requiring an applicant to furnish information to answer questions or to give particulars covering race, etc.

The Alberta, Manitoba, New Brunswick and the Northwest Territories provisions contain, after the clause "that expresses...any limitation, specification or preference," a second clause, "or that requires an applicant to furnish any information concerning race...."

The comparable Nova Scotia clause is "that directly or indirectly expresses any limitation, specification, preference or invites information, as to race...." The Saskatchewan clause is "that contains a question or a request for particulars as to the race...."

The British Columbia Act adds, in regard to advertisements, after the word "publish" the words "or display, or cause or permit to be published or displayed".

The Saskatchewan Act prohibits the use of any application form, the publication of any advertisement and the making of any inquiry that:

expresses either directly or indirectly a limitation, specification or preference...or an intent to make or give such limitation, specification or preference.

Ontario has separate sections prohibiting discriminatory application forms and inquiries. These are as follows:

"No employer shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any words, symbol or other representation that indicate directly or indirectly that race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin is or may be a limitation, specification or preference for a position or employment.

"No person shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any advertisement for a position or employment for or on behalf of an employer:

- (a) that contains any words, symbols or other representation; or
- (b) that is under a classification or heading,

indicating directly or indirectly that race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin, is or may be a limitation, specification or preference for the position or employment.

"No person shall use or circulate any form of application for employment or make any written or oral inquiry that expresses either directly or indirectly any limitation, specification, or preference as to race, creed, colour, nationality, ancestry or place of origin of any person or that requires an applicant for employment to furnish any information concerning race, creed, colour, nationality, ancestry or place of origin."

The Ontario Code permits an exception to the above provisions where a limitation, specification or preference as to sex or marital status is based on a bona fide occupational qualification and requirement for the position.

The specific grounds upon which discriminatory application forms, pre-employment inquiries, advertisements, etc., are prohibited are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | race, national origin, colour, religion |
| Alberta | race, religious beliefs, colour, sex, age (45-65), ancestry, place of origin (sex, age and marital status may be asked for on an application form) |

| | |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin (sex, marital status and age may be asked for on an application form, but political beliefs must not be asked for) |
| Manitoba | race, nationality, religion, colour, sex, age, marital status, ethnic or national origin |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic, national or social origin, age (19-65), assignment, attachment, seizure of pay, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, age (40-65), physical handicap, sex |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status, age (40-65) (sex, marital status and age may be asked for on an application form) |
| P.E.I. | race, religion, creed, colour, sex, marital status, ethnic or national origin, political belief, age (18-65), physical handicap |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

Many jurisdictions allow exceptions to the prohibited practices on various grounds.

In Alberta, an exception is allowed on all prohibited grounds relating to information requirements from a job applicant, where there is a bona fide qualification for employment.

Manitoba allows exceptions on the grounds of sex, age and marital status in both advertising, etc., regarding employment and pre-employment inquiries. Age may be excepted where the operation of a bona fide insurance, retirement or seniority plan are concerned, and where the age of majority is an issue.

New Brunswick allows exceptions to all prohibited grounds in both advertising, use of application forms, etc., and in pre-employment inquiries where a bona fide occupational qualification is concerned. Exceptions to all the provisions in this area respecting age discrimination are allowed where the operation of a bona fide pension, retirement, or insurance plan are concerned.

Newfoundland allows exceptions to all the prohibited grounds where a bona fide occupational qualification exists, and where bona fide pension, retirement, or employee insurance plans are affected. Also, the same exception as above under "(a) Employers" applies re: attachment, seizure or assignment of wages.

In Nova Scotia, exceptions exist for age provisions where there is a bona fide pension, retirement, or insurance plan, and for physical handicap, where the handicap relates to the employment, activity or association.

For advertising respecting employment, Ontario allows exceptions to the grounds of sex, marital status and age (40-65) where there is a related bona fide qualification for employment.

Saskatchewan allows exceptions on all grounds where a bona fide occupational qualification is concerned.

In the Yukon, all grounds are excepted for a bona fide qualification for employment.

The Prince Edward Island provisions do not apply to a domestic employed and living in a single family home, nor to an exclusively religious or ethnic organization or an agency of such an organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, if religion, creed, colour, sex, marital status or ethnic or national origin is a reasonable occupational qualification.

(d) Trade Unions

All the Acts forbid discrimination by a trade union on any of the prohibited grounds. The wording of the federal, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Saskatchewan, the Yukon and the Northwest Territories Acts is similar. They forbid a trade union to exclude any person from full membership or expel or suspend or otherwise discriminate against any of its members or discriminate against any person in regard to his employment by an employer.

The British Columbia, Manitoba and Ontario Acts forbid a trade union to exclude from membership or expel or suspend any person or member or discriminate against any person or member.

Alberta prohibits a trade union to exclude any person from membership therein, or expel or suspend any member thereof, or discriminate against any person or member.

The Québec provision is as follows:

"No one may practice discrimination in respect of the admission, enjoyment of benefits, suspension or expulsion of a person to, of or from an association of employers or employees or any professional corporation or association of persons carrying on the same occupation."

New Brunswick permits discrimination by trade unions where the discrimination is based upon a bona fide occupational qualification. In British Columbia, New Brunswick and Newfoundland, the provisions prohibiting discrimination by trade unions do not apply to bona fide retirement or pension plans; minimum service requirements of such plans; or bona fide group or employee insurance plans. Finally, non-profit organizations are not covered by provisions prohibiting discrimination by unions in Manitoba, Newfoundland and Prince Edward Island.

In all jurisdictions, the grounds upon which discrimination by trade unions is prohibited are the same as the grounds upon which discrimination in employment practices is prohibited, with two exceptions.

In Nova Scotia, prohibitions against sex discrimination apply to both trade union membership and employers. In the Northwest Territories, prohibitions against discrimination on the basis of place of residence apply to employers but not to trade union membership.

Exceptions

Exceptions to the prohibitions against discrimination by trade unions exist in several provinces.

British Columbia allows an exception where a criminal or summary conviction relates to the membership in a trade union.

New Brunswick allows exceptions to all prohibited grounds where a bona fide occupational qualification is concerned, and also allows, as does Nova Scotia, an exception where the age of a person relates to the operation of a bona fide pension, retirement or insurance plan.

Newfoundland allows an exception on all grounds where the operation of a bona fide retirement, insurance, or pension plan is concerned.

(e) Employers' Associations

Alberta, British Columbia, Manitoba, New Brunswick, and Québec have enacted prohibitions against membership in employers' associations. These prohibitions as well as the exceptions allowed are identical to the rules governing the activities of trade unions, as outlined above.

(f) Professional, Business and Trade Associations

In addition to provisions respecting discriminatory practices by employers' organizations, other jurisdictions have the various prohibitions apply to other groups as well. These are as follows:

| | |
|------------------|------------------------------------------------------------------------------------|
| Alberta | occupational associations |
| British Columbia | occupational associations |
| Manitoba | occupational associations |
| New Brunswick | trade, professional and business associations |
| Nova Scotia | professional, trade and business associations |
| Saskatchewan | professional and trade associations |
| P.E.I. | professional, business or trade associations |
| Québec | professional corporation or association of persons carrying on the same profession |

The Nova Scotia and New Brunswick Acts make it unlawful for a professional association or a business or trade association to exclude any individual from full membership or expel or suspend or otherwise discriminate against any of its members.

A "professional association" is defined to include an organization of persons which by an enactment, agreement or custom, has power to admit, suspend, expel or direct persons in the practice of any occupation or calling.

A "business or trade association" is similarly an organization of persons with power to admit, suspend, expel or direct persons in relation to any business or trade.

In New Brunswick, the application of statutory provisions restricting membership to Canadian citizens or British subjects is not affected.

Alberta defines the term "occupational association" as "any organization other than a trade union or employers' organization in which membership is a prerequisite to carrying on any trade, occupation or profession".

The Ontario Code forbids self-governing professions to exclude from membership or expel or suspend any person or member or discriminate against any person or member because of any of the prohibited grounds.

(g) Equal Pay

All jurisdictions have enacted laws which require equal pay for equal work without discrimination on the grounds of sex.

In six jurisdictions equal pay provisions are contained in the labour code -- the Canada Labour Code, Part III, Division II.I; the Ontario Employment Standards Act, Part VI; the Saskatchewan Labour Standards Act, Part V; the Nova Scotia Labour Standards Code (sections 55-57); the Yukon Labour Standards Ordinance; and the Manitoba Employment Standards Act (Part IV). In six other jurisdictions equal pay provisions form part of human rights legislation -- the Alberta Individual's Rights Protection Act, the British Columbia Human Rights Act, the Québec Charter of Human Rights and Freedoms, the Newfoundland, Prince Edward Island Human Rights Codes and the Northwest Territories Fair Practices Ordinance.

The New Brunswick legislation forbids an employer to pay a female employee at a rate of pay less than the rate paid to a male employee for the same work done in the same establishment.

Newfoundland forbids any employer or person acting on his behalf to establish or maintain differences in wages between male and female employees, employed in the same establishment who are performing, under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility, except where such payment is made pursuant to a seniority system or a merit system.

The Québec Charter of Human Rights and Freedoms states that an employer must without discrimination, grant equal salary or wages to the member of his personnel who perform equivalent work at the same place.

Prince Edward Island forbids all employers or persons acting on their behalf from discriminating between employees by paying one employee at a rate of pay less than the rate of pay paid to another employee employed by him for substantially the same work, the performance of which requires equal education, skill, experience, effort and responsibility and which is performed under similar working conditions, except where payment is made pursuant to a seniority system, merit system, or a system that measures earnings by quantity or production or performance. The seniority system and the quality or quantity systems cannot be discriminatory, however.

The Alberta Act forbids an employer to employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer (or vice versa) for similar or substantially similar work. The work is deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar or substantially similar. Reduction of an employee's rate of pay in order to comply with the legislation is prohibited.

The federal, Ontario, Saskatchewan and Manitoba provisions also protect persons of either sex against discrimination in the payment of wage rates. These provinces, and also Nova Scotia, lay down criteria for determining whether the work performed is the same or similar.

In the federal jurisdiction, an employer is forbidden to establish or maintain differences in wages between male and female employees employed in the same industrial establishment, who are performing, under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility.

In Ontario and Saskatchewan, the employer is prohibited from paying a female employee at a lesser rate of pay than that paid to a male employee (or vice versa) for the same work (similar work in Saskatchewan) performed in the same establishment, the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions. Nova Scotia's provisions are identical to Ontario's except that they only apply to female employees.

In the federal, Alberta, Ontario and Saskatchewan jurisdictions the employer is forbidden to reduce the rate of pay of an employee in order to comply with the equal pay requirement. Further, in Ontario employee or employer organizations may not cause or attempt to cause an employer to pay wages that contravene the equal pay provisions of the Act.

In Manitoba an employer is forbidden to pay the employees of one sex wages on a scale different from that on which wages are paid to employees of the other sex in the same establishment, if the work required of, and done by, employees of each sex is the same or substantially the same. By way of clarification, the Act states that the work of male and female employees is to be deemed the same or substantially the same if the job, duties, responsibilities, or services that the employees are called upon to perform are the same or substantially the same in kind or quality and substantially equal in amount.

All the Acts, where applicable, make it clear that a difference in rates of pay based on a factor other than sex does not constitute failure to comply with their requirements. In Nova Scotia, however, the employer must establish that such a factor justifies a different rate of pay.

The Ontario and Saskatchewan Acts contain specific exceptions in addition to the general exception permitting a differential based on any factor other than sex. In both provinces, differences in rates of pay based on: a seniority system; a merit system; or in Ontario, a system that measures earnings by quantity or quality of production; do not constitute discrimination within the terms of the Act.

In Québec, a difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.

In all provinces equal pay legislation is applicable to provincial government employees. The federal Act covers employees of Crown corporations but does not apply to other federal public servants. Rates of pay of classified public servants are set by classification, according to the type of work performed, without any distinction based on sex.

The procedure laid down for the enforcement of equal pay provisions may be invoked upon complaint by the aggrieved person in New Brunswick, Newfoundland and Prince Edward Island. Québec allows a complaint from the aggrieved person or group of persons to the "Commission des droits de la personne".

In Alberta and Nova Scotia, investigation may be initiated upon complaint by the aggrieved person or upon the initiative of the director appointed under the Act. The provisions of the Saskatchewan Act require the director, where he receives a directive from the Minister or a request from the aggrieved person, to advise the Human Rights Commission of the complaint and to request the Commission to conduct a formal inquiry into the matter.

In the federal, Ontario and Nova Scotia jurisdictions enforcement no longer depends solely on a formal complaint. The equal pay provisions are enforced through inspection by the field staff of the respective Departments of Labour.

A complaint is to be registered in Newfoundland, New Brunswick and Prince Edward Island with the Minister of Labour (of Manpower and Industrial Relations in Newfoundland); and in British Columbia, Manitoba and Saskatchewan with a designated officer of the Department of Labour (the director). In Alberta, complaints are made to the Human Rights Commission. The Alberta and British Columbia legislation imposes a six-month time limit for making a complaint.

In all jurisdictions, except Ontario, Nova Scotia and the federal industries, the legislation provides for an initial informal investigation into a complaint, usually by an officer of the Department of Labour. In Alberta, such an investigation is made by the Human Rights Commission.

In Newfoundland and New Brunswick, if the person designated to make the inquiry is unable to settle the matter, a board or commission of one or more persons may be appointed. In Newfoundland the commission is called the Human Rights Commission. (In Newfoundland, the Minister may, in addition, appoint a commission when he deems it desirable to have an inquiry made into any matter within the purview of the Act.)

In Alberta, the Human Rights Commission will refer a complaint that is not settled under the initial investigation to a Board of Inquiry (appointed by the Minister) to investigate the matter. In British Columbia and Saskatchewan, the director may refer the matter to the Human Rights Commission, a permanent body established under the Act. In Alberta and British Columbia, the Commission may dismiss a complaint at any stage of proceedings if it is of the opinion that it is without merit.

In Prince Edward Island, if the Human Rights Commission cannot effect a settlement, it must make a report to the Minister who may appoint a board of inquiry (one or more persons). If the board does not effect a settlement, it makes recommendations to the Commission, which then reports to the Minister. The Minister may then make such orders as he deems fit.

In Québec, where a complaint has been made for the Commission, the Commission attempts to effect a settlement. If this attempt is unsuccessful, the Commission may then recommend the cessation of any act, payment of indemnity, etc., and seek an injunction if the recommendation is not complied with.

The recommendations of the board, commission, committee or referee, as the case may be, may be put into effect by an order of the Minister except under the Alberta, British Columbia, Saskatchewan and Québec Acts. Under the Alberta Act, the recommendations of the board are made to the Commission. If the Commission is unable to effect a settlement on the course of action to be taken with the person against whom the finding was made, the Commission must deliver all material pertaining to the complaint to the Attorney General who may apply to the Supreme Court for an order. The Human Rights Commission must issue an order and in Saskatchewan it may issue an order if it finds that there has been a contravention of the Act.

In Newfoundland, the order of the Minister may be appealed to the Supreme Court. Under the Alberta Act, a decision of the board of inquiry may be appealed to the Supreme Court. An appeal of a decision or order made by the Saskatchewan Human Rights Commission may be made to a judge of the Court of Queen's Bench. In British Columbia, an order of the Human Rights Commission may be enforced by filing it in the Supreme Court of the province.

In British Columbia a board of inquiry may direct the person whom it has found to be in contravention of the Act to cease or rectify the contravention. It may also include in its order a direction to pay the wages lost as a result of the contravention. In Saskatchewan, where the Human Rights Commission finds that a contravention of the Act has been made it may order compliance with the provisions including the payment of compensation to the aggrieved party for previous service that was the subject of the complaint. Every person who violates the provisions of the federal Act is guilty of an offence and is liable on summary conviction to a fine, imprisonment, or both. The employer may

also be directed to pay arrears of wages to which the employee was entitled. In Alberta the judge may order compensation for the person discriminated against for all or any part of any wages or income lost or expenses incurred by reason of the discriminatory action.

In Ontario, the Director of Employment Standards (who, under the direction of the Minister of Labour, administers the Employment Standards Act) has authority to determine the amount of wages owing to an employee, where in his opinion an employer has contravened the equal pay provisions. The employer must be given a chance to be heard. For purposes of enforcement of the Act, this amount is to be deemed unpaid wages.

Where the director cannot determine the amount owing, the Minister may, on his recommendation, appoint a board of inquiry. The board is required to hear the parties and to recommend to the director the course of action that ought to be followed.

Under the wage collection procedure of the Employment Standards Act, the director is empowered to collect unpaid wages for an employee up to a maximum of \$2,000 and the employer is subject to a penalty of 10 per cent of the amount owing. An employer who has paid the wages and penalty as required has the right to apply to the Minister for a review, whereupon a person designated by the Minister is required to hold a hearing, giving the employer full opportunity to make submissions, and to decide the amount owing to the employee. If the employer is dissatisfied with the Minister's decision, he may appeal the decision to the Supreme Court on the grounds that it is erroneous in point of law or in excess of jurisdiction.

The legislation in Nova Scotia is similar to that in Ontario. Where the Director of Labour Standards finds that an employer has not paid equal wages, he may direct the employer to pay the amount due to the employee to the Labour Standards Tribunal. If he disputes the director, the employer may apply to the Tribunal for a determination of the amount. If the Tribunal finds the employer is indebted to the employee, it must order the employer immediately to pay over to the Tribunal the amount of pay found to be unpaid. The person to whom the order is directed must forthwith comply with the order.

Provision is made in all the Acts for prosecution in the courts as a last resort. Failure to comply with the Act or an order is made an offence punishable by a fine. In Newfoundland, Ontario and Saskatchewan, the convicting magistrate must order the payment of wages due, in addition to imposing a fine. Under the federal Act, an employer convicted of an offence under the Act may, in addition to any other penalty, be made liable for payment of wages found to be due.

Each of the Acts, except the New Brunswick Female Employees Fair Remuneration Act, makes it an offence for an employer to dismiss or otherwise discriminate against an employee because he has made a complaint or given evidence under the Act.

A number of the laws provide that a person claiming to be aggrieved by an alleged contravention of the Act has a choice of initiating court proceedings or of making a complaint. Some Acts stipulate that the right of an employee to take any other proceeding for recovery of wages to which he is entitled is not barred by reason of any remedy provided for in the Act.

The Northwest Territories Fair Practices Ordinance, which is a Human Rights Code, provides for equal pay for equal work. The Ordinance forbids an employer to employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer for similar or substantially similar work. The work is deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar or substantially similar. Reduction of an employee's rate of pay in order to comply with the legislation is prohibited. A difference in rates based on a factor other than sex does not constitute discrimination.

Enforcement is initiated by complaint of the aggrieved person to the officer appointed by the Commissioner of the Northwest Territories to deal with such matters. The Commissioner may then appoint an officer to inquire into the complaint. If settlement is not reached through conciliation, the officer must recommend to the Commissioner the action that should be taken with respect to the complaint. The Commissioner may issue whatever order he thinks necessary to put the recommendations into effect. A person affected by the order may appeal it within 10 days to a judge of the Territorial Court, whose decision is final.

In the Yukon Territory, sections of the Labour Standards Ordinance prohibit an employer from paying a female employee at a lesser rate of pay than that paid to a male employee or vice versa for "the same work performed under similar working conditions" except where such payment is made pursuant to a seniority system; a merit system; a system measuring earnings by quality or quantity of production; or a differential based on any factor other than sex. Reductions of an employee's pay in order to comply with this legislation is not permitted. Employers' and employees' organizations are prohibited from causing or attempting to cause an employer to pay his employees rates of pay that contravene the legislation. Where the employer has not paid the wages required, the Labour Standards Officer may determine the amount owing the employee and such amount shall be deemed to be unpaid wages. Where the officer is unable to effect a determination, the matter is referred to the Advisory Board for investigation. The board, upon review of the matter recommends what action should be taken.

3. Occupancy, Property Sales

(a) Occupancy

All provinces and the two territories have enacted anti-discrimination provisions in the areas of property rental and occupancy. The wording and extent of the provisions vary from one jurisdiction to another, with some common characteristics throughout.

The Yukon and Northwest Territories limit occupancy provisions to cover only self-contained apartment dwelling units. The Yukon's provisions cover only apartment buildings with more than six dwelling units.

Alberta, Newfoundland and Nova Scotia extend coverage to occupancy (Alberta uses the term "tenancy") in commercial or self-contained dwelling units. Nova Scotia adds "or housing unit used to provide rental accommodation".

Québec's prohibitions are general in nature; they outlaw discrimination in any juridical act. This includes occupancy agreements.

Manitoba and Ontario refer to occupancy in any commercial or housing accommodation, while New Brunswick's provisions cover occupancy in any commercial or dwelling unit.

Prince Edward Island's provisions cover occupancy in any dwelling unit.

British Columbia and Saskatchewan have relatively wide coverage; British Columbia provides for tenancy in any space...available, while Saskatchewan's provisions cover any interest in lands or occupancy thereof.

The grounds upon which discrimination in the provision of occupancy is prohibited in the various jurisdictions are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|-------------------------------------------------------------------------------------------------------------------|
| Alberta | race, religious beliefs, colour, sex, ancestry, place of origin |
| British Columbia | race, religion, colour, sex, marital status, ancestry, place of origin |
| Manitoba | race, nationality, religion, colour, sex, age, ethnic or national origin, source of income |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, sex |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex |

| | |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------|
| P.E.I. | race, religion, creed, colour, sex, ethnic or national origin, marital status, political belief |
| Québec | race, colour, sex, civil status, religion, political convictions, language, ethnic or national origin, social condition |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

In Manitoba, an exception is allowed on the grounds of sex where the occupancy of the housing (except for the owner and his family) is restricted to one sex. Also, a preference for elderly persons is allowed.

New Brunswick allows exceptions on the grounds of sex or marital status where a bona fide qualification (as determined by the Human Rights Commission) exists.

Nova Scotia allows exceptions on all prohibited grounds where the dwelling unit is a single, non-advertised, non-listed room in a dwelling the rest of which is occupied by the landlord and the landlord's family.

Ontario allows a similar exception to that allowed by Manitoba.

In Prince Edward Island the sex discrimination prohibitions in occupancy do not apply to a housing unit where the unit is in a structure having two or more units; or to a self-contained dwelling unit, where such unit is in a structure having two or more self-contained units.

The Québec prohibitions do not apply to a person who leases a room in a dwelling if the lessor or his family resides in such dwelling, leases only one room, and does not advertise the room by public notice.

In the Yukon, an exception is allowed where the dwelling unit is in a building limited to persons of one sex.

(b) Conveyance of Property

In British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan, prohibitions against discrimination in the conveyance of property have been enacted.

In all the above jurisdictions the grounds upon which discrimination is prohibited coincide with the prohibited grounds respecting occupancy, except that in the case of Manitoba, marital status is a further ground upon which discrimination is prohibited.

4. Where the Acts do not Apply

The federal Act and those of the Northwest and Yukon Territories do not apply to the Crown. Those of all other jurisdictions do. The federal provisions do, however, apply to crown corporations and agencies.

With some variation in wording, most Canadian jurisdictions exclude non-profit charitable, philanthropic, fraternal, religious and social organizations from their employment practices provisions. Newfoundland limits this lack of application to non-profit religious and fraternal organizations. In Alberta such organizations are exempted only from the provisions relating to the publishing or display of signs, notices, emblems, etc.

Nova Scotia also excludes these groups from the volunteer services provisions of its Human Rights Act.

British Columbia excludes the above-mentioned organizations from all the provisions of its Human Rights Code where they give preference to members of the identifiable group or class.

New Brunswick allows no exclusion for such organizations or corporations.

Alberta, Manitoba, Nova Scotia, Newfoundland, Ontario, Prince Edward Island, Québec, the Northwest Territories and Yukon state that employment provisions do not apply to domestic servants employed in a private home. In Nova Scotia, Newfoundland and Prince Edward Island, the stipulation "and living in" a private home is added.

In Alberta, employment practices provisions do not apply to a farm employee who resides in the home of the farmer who employs him.

5. Special Programs

In Manitoba, Nova Scotia, New Brunswick, Ontario, British Columbia and the Northwest Territories the Human Rights Commission (the Commissioner in the Northwest Territories) may approve special programs designed to promote the welfare of minority groups.

In Nova Scotia, the Commission may approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals, and any approved programs shall be deemed not to be a violation of the prohibitions of this Act.

Québec's Commission ~~must~~ establish a program of education and information designed to promote an understanding and acceptance of the objects and provisions of the Charter of Human Rights and Freedoms.

In New Brunswick, on the application of any person, or on its own initiative, the Commission may approve a program to be undertaken by any person designed to promote the welfare of any class or persons. At any time before or after approving a program, the Commission may make inquiries concerning the program, vary the program, impose conditions on the program, or withdraw approval of the program as the committee thinks fit. Anything done in accordance with a program approved pursuant to this section shall not be a violation of the provisions of this Act.

In Ontario, the Commission may, "upon such conditions or limitations and subject to revocation or suspension, approve in writing any special plan or program by the Crown, any agency therefore, any person to increase the employment of members of a group or class of persons because of the race, creed, colour, age, sex, marital status, nationality or place of origin or the members of the group or class of persons".

In British Columbia under the Human Rights Code the Commission may approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals and any approved program shall be deemed not to be in contravention of any of the provisions of the Act.

In the Northwest Territories, the Commissioner may "approve programs designed to promote the welfare of any class of individuals, and any such program shall be deemed not to be a violation of the provisions of this Ordinance".

In Manitoba, the Commission may approve any special plan by the Crown, any Crown agency, or any person to increase the employment of members of a group or class of persons on the basis of the race, nationality, religion, colour, sex, age, marital status, ethnic or national origin of the members of the group or class of persons.

6. Protection of Complainants

All jurisdictions except Québec contain provisions forbidding reprisals against complainants.

The federal and Saskatchewan provisions are similar, with slight variations in wording.

Federal -

No employer or trade union shall discharge, expel or otherwise discriminate against any person because he has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

More detailed provisions are found in Ontario, Manitoba and British Columbia.

Ontario and Manitoba -

No person shall,

refuse to employ or continue to employ any person;

threaten to dismiss or threaten to penalize in any other way any person in regard to his employment or any term or condition thereof;

discriminate against any person in regard to his employment or any term or condition thereof; or

intimidate or coerce or impose any pecuniary or other penalty upon any person;

on the ground that such person,

has made or may make a complaint under this Act;

has made or may make a disclosure concerning the matter complained of;

has testified or may testify in a proceeding under this Act; or

has participated or may participate in any other way in a proceeding under this Act.

British Columbia -

The Human Rights Code of British Columbia states that no person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty upon, or otherwise discriminate against, any person because that person complains, gives evidence, or otherwise assists in respect of the initiation of a complaint or other proceeding under that Act.

The Alberta, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island Acts contain a different provision covering discrimination in rental practices as well as employment. As an example, the Newfoundland provision states:

No person, employer or trade union shall evict, discharge, suspend, expel or otherwise discriminate against any person because he had made a complaint...(rest as in federal provision).

7. Administration of Acts

The Minister of Labour is responsible for fair practices legislation in seven jurisdictions - federal and six provinces. In Nova Scotia, Manitoba and Saskatchewan it is the Attorney General, in Newfoundland it is the Minister of Manpower and Industrial Relations. (The Alberta, Manitoba, Nova Scotia, Québec and Saskatchewan Acts do not actually specify the Minister responsible.) In both the Northwest Territories and the Yukon, the Commissioner is responsible for the fair practices legislation.

Subject to the direction of the Minister, a director administers the federal, British Columbia and Newfoundland Acts and a Human Rights Commission the Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan Acts. The Prince Edward Island Act is administered by the Minister of Labour and Manpower Resources. The Ordinances in the Northwest Territories and the Yukon are administered by the "officer appointed by the Commissioner to inquire into complaints under the Ordinance".

In British Columbia, Nova Scotia and Saskatchewan, a director is responsible for the actual administration. The Alberta, New Brunswick and Ontario Human Rights Commissions also have directors (although this is not specified in the New Brunswick or Ontario legislation).

8. Human Rights Commissions

All provinces provide for Human Rights Commissions.

Besides providing for a permanent Commission of at least three members, the Newfoundland Act refers to a Human Rights Commission, which is an ad hoc body of one or more members appointed as a board of inquiry.

All Commissions except Québec's, which is appointed by the National Assembly, are appointed by the Lieutenant-Governor-in-Council. The Prince Edward Island Commission has three members, and Québec's at least seven. The Newfoundland, New Brunswick, Nova Scotia, and Ontario Commissions are to have three or more members and the Saskatchewan, not less than three; the other three provinces do not specify a number. The Saskatchewan Commissioners are appointed for a five-year renewable term; Nova Scotia Commissioners for a specific renewable term; and in Manitoba, the Lieutenant-Governor-in-Council may determine the term of office. Prince Edward Island provides for reappointment, but terms must be staggered so that one Commissioner retires each year.

A director may be appointed in Alberta and Saskatchewan, and must be appointed in Nova Scotia, Newfoundland and British Columbia. In Saskatchewan, the director is the chief executive officer and secretary of the Commission, and in Nova Scotia he is the chief executive officer and a member, with the status of a deputy minister.

All provide for the appointment of other staff, usually under the Civil Service Act.

Under the British Columbia Code, the Minister is to appoint a director who is to act as chief executive officer of the Commission and as registrar for the execution of complaints under the Act. The Minister also appoints persons to a panel who shall be eligible to serve on boards of inquiry.

In Newfoundland, the director is executive director of the Commission. Manitoba provides for boards of adjudication which are appointed by the Attorney General. These boards provide an investigative function. In cases where the Commission is unable to effect a settlement, the matter may be referred to the board of adjudication through the Minister for settlement.

9. Enforcement - Initiation

All the Acts operate through a complaint process. The Alberta and Nova Scotia Acts provide, in addition, for the investigation of a case where the Commission "has reasonable grounds for believing that a complaint exists". In Ontario, the Commission may initiate a complaint where it has reason for believing that any person has contravened any of the sections prohibiting discriminatory practices. In Manitoba the Commission may investigate on its own initiative.

In most jurisdictions the complaint must be made by the aggrieved person in writing, usually in the form prescribed.

In Ontario the complaint may be made by "any person who has reasonable grounds for believing that any person has contravened a provision of the Act". Where a complaint is made by other than the aggrieved person, the Commission may refuse to file the complaint unless the aggrieved person consents.

In Saskatchewan any person may make a complaint either orally or in writing.

In most jurisdictions the complaint must be dealt with, at least at the first stage of investigation. In the federal jurisdiction, Newfoundland, and the Territories it may be investigated. The British Columbia, Alberta and New Brunswick Commissions may at any stage of the proceedings dismiss a complaint that is without merit.

Alberta and British Columbia set a time limit on complaints - six months from the alleged contravention of the Acts. In Manitoba the time limit is one year.

Complaints are made to the director in the federal jurisdiction, Newfoundland and British Columbia, to the officer appointed by the Commissioner in each of the Territories and to the Commission in the remaining provinces.

10. Enforcement - Inquiries

All the Acts provide for the settlement of complaints, if possible, by conciliation and persuasion. They provide for an initial informal investigation into a complaint by an officer who is directed to "endeavour to affect a settlement". In Manitoba the first stage is an inquiry by a board of adjudication.

Depending on jurisdiction, the investigation officer may be an officer of the Department or the Commission or any other person.

In both the Northwest Territories and the Yukon where the officer fails to settle the complaint he may, where he feels the complaint has merit, recommend to the Commissioner the action that should be taken with respect to the complaint.

In the other jurisdictions, where the informal conciliation fails, a more formal inquiry including a hearing, by a board, whether ad hoc or permanent, is provided for.

A board under the federal, Alberta, British Columbia, Prince Edward Island, New Brunswick, Newfoundland, Nova Scotia and Ontario legislation is an ad hoc body, consisting of one or more persons. It is referred to in the federal Act as an industrial inquiry Commission. In Newfoundland the inquiry may be made either by the permanent Human Rights Commission or by an ad hoc Human Rights Commission consisting of one or more persons. In Saskatchewan and Manitoba, the inquiry is conducted by the permanent Human Rights Commissions.

Québec provides that the Commission may appoint a person other than its own personnel to make an investigation and report to it.

The board or commission is appointed by the Minister in Newfoundland and Nova Scotia, by the Minister on the recommendation of the director in the federal jurisdiction, and by the Minister on the recommendation of the Commission in Alberta, Prince Edward Island, New Brunswick and Ontario. In Ontario the Commission is required to recommend whether or not a board should be appointed. In British Columbia the director may refer the dispute to a board of inquiry through the Minister. In Québec and Saskatchewan the Commission makes its own decision. The Saskatchewan Commission must report to the Minister whether it is appointing a board or not; if none is appointed, the Minister may do so.

Four of the Acts (Alberta, New Brunswick, Nova Scotia and Ontario) require the Minister to communicate the names of the members of the board of inquiry to the parties to the complaint. Except in Nova Scotia, this is to be done "forthwith". In Nova Scotia, the Minister must also communicate to the parties the terms of reference of the board. The Ontario Act specifies who are 'parties' to the proceedings.

All the boards and commissions have the powers required to make a proper investigation and determine their procedure. In Alberta and Ontario the Acts outlining proper procedures apply. All Acts but the Act of Québec provide that all parties must be given full opportunity to present evidence and make representations. Alberta and Manitoba expressly provide the right to legal counsel.

The Nova Scotia Act states that a board must conduct "a public inquiry" into the matter referred to it.

In Ontario, the members of the board of inquiry must not have taken part in any previous investigation of the complaint. The board cannot communicate with any party without giving notice of an opportunity for all to participate. If it seeks legal advice from an independent adviser, it must communicate the nature of the advice to the parties in order that they may make submissions as to the law.

The Alberta Act is the only Act which sets a time limit for the board's proceedings. Under that Act, a board of inquiry is required to report to the Administrator within 14 days after its appointment, exclusive of Saturdays and holidays, or within such longer period as the Minister may approve. The board must state in its report whether it found the complaint to be justified or not.

In the federal jurisdiction, Manitoba and Newfoundland, when the board or commission finds the complaint justified by evidence, it is required to recommend to the Minister the course that ought to be taken with respect to the complaint. In New Brunswick, recommendations are made to the Commission, which in turn makes recommendations to the Minister.

The federal and New Brunswick Acts state that the recommendations may include reinstatement with or without compensation for loss of employment.

In Alberta, the board must report to the Commission whether it finds the complaint to be justified or not, and make its recommendations where it finds the complaint justified in whole or in part.

In Nova Scotia, where the matter is settled, the board must report the terms of settlement to the Commission with any comment the board deems appropriate.

Where the matter is not settled and the board finds that the complaint is supported by "a reasonable preponderance" of the evidence, it must report to the Human Rights Commission on the course that ought to be taken. The Human Rights Commission must recommend to the Minister any action necessary to give effect to the recommendations of the board.

In British Columbia, Ontario and Saskatchewan the commission or board does not make recommendations but issues an order itself.

11. Enforcement - Orders

Except in Québec, provision is made for orders requiring compliance. It is an offence to violate such an order.

In the federal jurisdiction, Manitoba, Newfoundland and Nova Scotia, upon receipt of the board's or commission's recommendations, the Minister may issue an order to put them into effect. In the federal jurisdiction, the Minister must furnish the persons affected with a copy of the recommendations and may publish them as he sees fit.

The Manitoba and Newfoundland Acts provide a right of appeal from the Minister's order to the Court of Queen's Bench and the Supreme Court, respectively.

In New Brunswick, the Human Rights Commission is authorized to issue an order to put into effect the recommendations of the board of inquiry. The order may include reinstatement with or without compensation for loss of employment. The Commission must furnish a copy of the board's recommendations to each of the persons affected and may, if the Minister deems it advisable, publish the recommendations in the manner it sees fit.

In British Columbia, if a board of inquiry decides that the Act has been contravened, it must issue an order directing the person to cease the activity in question, and may order the person concerned to take remedial action. This may include payment of lost wages and payment of damages not exceeding \$5,000. Such an order is final and may be enforced by filing a copy in the Supreme Court or a County Court.

In Saskatchewan, where the Commission finds the complaint to be justified, and the matter has not been settled in the meanwhile, it may order the contravening party to do whatever the Commission considers full compliance and to rectify any injury or to make compensation for it.

A decision or order of the Commission may be appealed to the Court of Queen's Bench.

In Ontario, the board of inquiry must decide if the Act has been contravened and may order the guilty party to comply with the Act and to rectify any injury or make compensation for it. This order may be appealed to the Supreme Court on questions of law or fact or both. The Minister is entitled to be heard in any appeal.

In Alberta, the Commission has 30 days from the report of the board of inquiry to effect a settlement regarding the course of action with the violator. If settlement is not reached it must then immediately hand its files and records to the Attorney General, who may, within 30 days, apply to the Supreme Court for an order.

The judge may order the violator to do any or all of the following: to cease the contravention and refrain in the future from the same or a similar contravention; to make available to the aggrieved person the rights, opportunities or privileges denied; to compensate for all or part of wages or income lost or expenses incurred; to do anything else the judge considers proper to place the aggrieved person in the position he would have been but for the contravention; to pay fines.

In the Northwest Territories and the Yukon, the Commissioner, after he has received the recommendations of the officer, may issue whatever order he thinks necessary to put the recommendations into effect. A person affected by the order may appeal it within 10 days to a judge of the Territorial Court, whose decision is final.

In Manitoba, where a case has been passed to a board of adjudication and the board finds that a violation has occurred, it may make an order directing that lost wages be compensated for. It may also order that the guilty party do or refrain from doing something in order that the Act is complied with.

The board may file an order with the Court of Queen's Bench, thus giving the order the status of a court judgment. Appeal may be filed with the Court of Queen's Bench.

12. Prosecution and Penalties

Violation of any provision of the Act or failure to comply with any provision of the Act or of an order made under the Act is made an offence for which a person is liable on summary conviction to a fine. Alberta does not refer to offences - see "orders" above. In Québec, fines are imposed under the Summary Conviction Act.

Fines that may be imposed:

Maximum

| <u>Individuals</u> | <u>Others</u> | <u>Jurisdiction</u> |
|--------------------|---------------|---------------------------|
| \$ 100 | \$ 500 | Federal |
| | | Newfoundland |
| | | Northwest Territories |
| | | Yukon |
| \$ 200 | \$1,000 | Alberta |
| \$ 500 | \$1,000 | Nova Scotia |
| \$ 500 | \$2,000 | New Brunswick |
| \$1,000 | \$5,000 | Ontario, British Columbia |

Minimum-Maximum

| | | |
|---------------|---------------|--------------|
| \$100-\$1,000 | \$500-\$5,000 | Manitoba |
| \$100-\$ 500 | \$200-\$2,000 | P.E.I. |
| \$100-\$ 500 | \$400-\$2,000 | Saskatchewan |

The Acts of all jurisdictions except British Columbia (does not apply in Alberta) state that no prosecution for an offence under the Act shall be instituted without the written consent of the Minister. In Manitoba, the prosecution may be commenced on the information of any person alleging that he or any class of persons, or member of that class, has been denied, abridged or restricted of rights under the Act.

In the Northwest Territories, in a prosecution for an offence, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified.

Under the British Columbia Act, a complaint may not be received or a prosecution commenced after six months have elapsed after the commission of the alleged offence.

In the Nova Scotia Act, the general principle is laid down that in any prosecution it shall be sufficient for conviction if a "reasonable preponderance of evidence" supports a charge that the accused has done anything prohibited by the Act or has refused or neglected to comply with an order made under the Act.

All the Acts except the Act of Québec expressly state that court action for an offence under the Act may be instituted against a trade union or employers' organization in the name of the union or organization, and that the union or organization is liable for the acts of any of its officers, etc., within the scope of his authority. The Nova Scotia Act states that for the purposes of any prosecution, professional associations and business or trade associations shall be deemed to be corporations.

Seven statutes (federal, Manitoba, New Brunswick, Newfoundland, Saskatchewan, Northwest Territories and Yukon) further direct that a court may, in addition to imposing a fine, order the employer to pay compensation equivalent to the remuneration lost and to reinstate the employee who has been suspended, transferred, laid off or discharged in violation of the Act.

The Newfoundland Act stipulates that the magistrate, in ordering payment of lost wages and reinstatement, must give due consideration to all circumstances of the case, including any wages or other remuneration earned by the employee with another employer. For the Alberta provision - see orders above.

V - TABLES

The following tables are designed to serve as a rapid reference to the main provisions of the Acts, insofar as prohibited practices are concerned. Included are exceptions allowed in the case of certain practices, and outlines of cases where the Act does not apply.

In using the tables, the reader will see the various practices listed on the left, while the grounds upon which discrimination is prohibited are listed across the top. Where the co-ordinates meet, the space is either blank or it will contain a reference. A blank space indicates no prohibition, while a reference indicates a prohibition and the section of the appropriate Act where the provision may read in detail.

Where the provisions are contained in more than one Act, the reference is preceded by "A", "B", etc. In the case of Saskatchewan, for example, the various prohibited practices are found in three separate Acts; hence, "A", "B", and "C".

A footnote numeral found at the extreme left under "Practices" indicates that a noted exception applies to all prohibited grounds, while a footnote found in a space to the right indicates an exception on a selected ground or grounds only.

FEDERAL

A. CANADA LABOUR CODE – PART I
FAIR EMPLOYMENT PRACTICES
B. CANADA LABOUR CODE – PART III – STANDARDS

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | NATIONAL ORIGIN | COLOUR | RELIGION | SEX |
|----------------------------------------------------|---------|-----------------|---------|------------|-----|
| Employment, terms and conditions of | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | |
| Use of employment agencies that discriminate | A-5 (2) | A-5 (2) | A-5 (2) | A-5 (2) | |
| Use of employment application forms, advertisement | A-5 (5) | A-5 (5) | | A-5 (5) | |
| advertisements, pre-employment enquiries | | | | | |
| Membership in trade unions | A-5 (3) | A-5 (3) | | A-5 (3) | |
| Pay of males | | | | B-30.1 (1) | |
| Pay of females | | | | B-30.1 (1) | |

NON-APPLICATION OF ACT
 – Employment practice provisions (other than equal wages)
 Do not apply to:
 a) Employer with fewer than five employees
 b) Nonprofit charitable, philanthropic, fraternal, religious, social organization, nonprofit organizations which
 foster religious or racial group

INDIVIDUAL'S RIGHTS
PROTECTION ACT

ALBERTA

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | RELIGIOUS BELIEFS | COLOUR | SEX | AGE (45-65) | ANCESTRY | PLACE OF ORIGIN | MARITAL STATUS |
|------------------------------------------------------------------------------------------------------------------------------|-----------|-------------------|--------------------|--------------------|-------------|-----------|-----------------|--------------------|
| Employment, terms ² and conditions of Advertisement, applications re: preference for applicant (employment) | 6 (1) | 6 (1) | 6 (1) | 6 (1) ¹ | 6 (1) | 6 (1) | 6 (1) | 6 (1) ¹ |
| Requirement of ³ information on application form (employment) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) | 7 (1) (a) |
| Requirement of ³ information on application form (employment) | 7 (1) (b) | 7 (1) (b) | | | | 7 (1) (b) | 7 (1) (b) | 7 (1) (b) |
| Membership in trade unions, employers' or occupational associations | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 |
| Publishing or ⁴ display of signs, symbols, emblems | 2 (1) | 2 (1) | 2 (1) ³ | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) |
| Promotion of public accommodation, facilities | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Tenancy in commercial, or residential dwelling unit | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Pay of wages | | | | 5 (1) (b) | 5 (1) (b) | | | |
| Pay of females | | | | 5 (1) (a) | | | | |

EXCEPTIONS

1. Operation of home fibre instruments, pension plan
2. Home fibre qualification for employment
3. Identification of facilities customarily used by one sex
4. Free expression of opinion

NON-APPLICATION OF ACT

- Limitations re: employment, advertising, etc. re: employment do not apply to
 - a) Domestic employee in private home
 - b) Farm employee who resides in private home of farmer who employs him
- Limitations re: display of signs, symbols, etc. Do not apply to non-profit political, religious, or common ancestry or place of origin organizations

BRITISH COLUMBIA

HUMAN RIGHTS CODE

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | RELIGION | COLOUR | SEX | MARRITAL STATUS | AGE (45-65) | ANCESTRY | PLACE OF ORIGIN | POLITICAL BELIEF |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------|--------------------------|--------------------------|-----------------|--------------------|-----------|-----------------|------------------|
| | | | | | | | | | |
| Employment, terms ² , ³ and conditions of preference, limitation in application forms, advertisements, inquiries re: job applicant | 8 (1) | 8 (1) | 8 (1) ¹ | 8 (1) | 8 (1) | 8 (1) ⁴ | 8 (1) | 8 (1) | 8 (1) |
| Requirement of information by job applicant | 7 (a) | 7 (a) | 7 (a) | 7 (a) | 7 (a) | 7 (a) | 7 (a) | 7 (a) | 7 (a) |
| Publishing, signs, etc. ⁷ | 7 (b) | 7 (b) | 7 (b) | 7 (b) | 7 (b) | 7 (b) | 7 (b) | 7 (b) | 7 (b) |
| Membership in trade ³ , union, employer's association, occupational association | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) | 2 (1) |
| Provision of public accommodation, service, facility | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) |
| Sale of property, interest in property | 3 (2) (a) | 3 (2) (a) | 3 (2) (a) ^{1,5} | 3 (2) (b) ^{1,5} | 3 (2) (a) | 3 (2) (a) | 3 (2) (a) | 3 (2) (a) | 3 (2) (a) |
| Tenancy, terms of tenancy | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Pay of males and females | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 |
| | | | | | | | | | |

EXCEPTIONS

- 1 Public decency
- 2 Where any act re: Canadian citizenship constitutes a reasonable cause
- 3 Where criminal or summary conviction relates to employment, membership
- 4 Operation of bona fide insurance, pension, savings plan
- 5 Discrimination of insurance premiums or benefits
- 6 Shared accommodation
- 7 Free expression of opinion
 - Enumerated grounds not intended to be limiting

NON-APPLICATION OF ACT

- Any charitable, philanthropic, educational, fraternal religious, or social organization (non-profit) having as a primary purpose the promotion of interests and welfare of an identifiable class or group characterized by common race, religion, age, sex, marital status, political belief, colour, ancestry, place of origin may give preference to members of the identifiable group or class

MANITOBA

A. HUMAN RIGHTS ACT
B. EMPLOYMENT STANDARDS ACT

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | NATIONALITY | RELIGION | COLOUR | SEX | AGE | MARITAL STATUS | ETHNIC OR NAT ORIGIN | POLITICAL BELIEFS | SOURCE OF INCOME |
|------------------------------------------------------------------------------|--------------|--------------|--------------|--------------------------|------------------------------|-------------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| Employment, terms and conditions of | A-6 (1) (a) | A-6 (1) (a) | A-6 (1) (a) | A-6 (1) (a) ¹ | A-6 (1) (a) ^{1,2,4} | A-6 (1) (a) ¹ | A-6 (1) (a) | A-6 (1) (a) ¹ | A-6 (1) (a) | A-6 (1) (a) ¹ |
| Referral by employment agency | A-6 (1) (b) | A-6 (1) (b) | A-6 (1) (b) | A-6 (1) (b) | A-6 (1) (b) ¹ | A-6 (1) (b) ^{1,2,4} | A-6 (1) (b) ¹ | A-6 (1) (b) | A-6 (1) (b) | A-6 (1) (b) ¹ |
| Membership, etc. in trade union, employer's organization, occupational ass'n | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) | A-6 (1) (c) |
| Advertising re: employment | A-6 (2), (3) | A-6 (2), (3) | A-6 (2), (3) | A-6 (2), (3) | A-6 (2), (3) ¹ | A-6 (2), (3) ^{1,2,4} | A-6 (2), (3) ¹ |
| Pre-employment enquiries, use of application forms | A-6 (4) | A-6 (4) | A-6 (4) | A-6 (4) | A-6 (4) | A-6 (4) ¹ | A-6 (4) ^{1,2,4} | A-6 (4) | A-6 (4) | A-6 (4) |
| Categorization, referred by employment agency | A-6 (5) | A-6 (5) | A-6 (5) | A-6 (5) | A-6 (5) | A-6 (5) ¹ | A-6 (5) ^{1,2,4} | A-6 (5) | A-6 (5) | A-6 (5) |
| Contracts offered to public | A-7 (1) | A-7 (1) | A-7 (1) | A-7 (1) | A-7 (1) | A-7 (1) ² | A-7 (1) ² | A-7 (1) | A-7 (1) | A-7 (1) |
| Publishing, signs ³ , notices, etc. | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) ⁸ | A-2 (1) ⁸ | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) |
| Provision of public accommodation, services | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) |
| Provision of commercial unit or housing | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) ⁷ | A-4 (1) ⁷ | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) |
| Property conveyance | A-5 | A-5 | A-5 | A-5 | A-5 | A-5 | A-5 | A-5 | A-5 | A-5 |
| Pay males and females | | | | | B-40 | | | | | |

EXCEPTIONS

¹ bona fide qualification for employment

² Operation of bona fide insurance, retirement, beneficiary plan

³ Free expression of opinion

⁴ Age of majority

⁵ Public decency

⁶ Occupancy of housing restricted to one sex (except for owner and family)

⁷ Preference for elderly

⁸ Identification of facilities customarily used by one sex

NON-APPLICATION OF ACT

¹ Employment provisions not applicable to exclusively religious, philanthropic, educational, fraternal, or social organization not operated for profit

² Employment provisions not applicable to domestic employee or to be employed in single family residence

³ Employment provisions not applicable to employer

NEW BRUNSWICK

A. HUMAN RIGHTS CODE
 B. FEMALE EMPLOYEE FAIR
 REMUNERATION ACT

| PRACTICE | RACE | COLOUR | RELIGION | NATIONAL ORIGIN | ANCESTRY | PLACE OF ORIGIN | AGE 19 AND OVER | MARITAL STATUS | SEX |
|-------------------------------------------------------------------------|---------|---------|----------|----------------------|----------------------|-----------------|----------------------|----------------------|----------------------|
| DISCRIMINATION PROHIBITED | | | | | | | | | |
| Employment, terms ¹ and conditions of | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) ² | A-3 (1) | A-3 (1) |
| Operation of employment agency ¹ | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) ² | A-3 (2) | A-3 (2) |
| Pre-employment ¹ inquiries, use of application forms | A-3 (4) | A-3 (4) | A-3 (4) | A-3 (4) | A-3 (4) | A-3 (4) | A-3 (4) ² | A-3 (4) | A-3 (4) |
| Membership, etc. ¹ , in trade unions employers organizations | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) ² | A-3 (3) | A-3 (3) |
| Provision of occupancy in commercial or dwelling unit | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) ³ | A-4 (1) ⁴ | A-4 (1) ⁵ |
| Conveyance of property | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) |
| Provision of public accommodation, services, facilities | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) ¹ | A-5 (1) ³ |
| Publishing signs ⁶ , notices, symbols, etc. | A-6 (1) | A-6 (1) | A-6 (1) | A-6 (1) | A-6 (1) | A-6 (1) | A-6 (1) | A-6 (1) ¹ | A-6 (1) ³ |
| Membership in trade, professional, business associations | A-7 (1) | A-7 (1) | A-7 (1) | A-7 (1) ⁵ | A-7 (1) ⁵ | A-7 (1) | A-7 (1) | A-7 (1) | A-7 (1) |
| Pay of females | | | | | | | | B-3 (1) | |

EXCEPTIONS

¹ Bona fide occupational qualification² Operation of bona fide pension, retirement, insurance plan³ Bona fide qualifications as determined by Commission⁴ Free expression of opinion⁵ Application of statutory restrictions limiting membership to Canadian citizens or British subjects.

NEWFOUNDLAND HUMAN RIGHTS CODE

NEWFOUNDLAND

DISCRIMINATION PROHIBITED

| PRACTICE | PLACE | RELIGION | RELIGIOUS CRED | SEX | POLITICAL OPINION | COLOUR | ETHNIC, NAT. OR SOCIAL ORIGIN | AGE 66 19 | MARITAL STATUS | ATTACHMENT SEIZURE, ETC. OF PAY |
|----------------------------------------------------------------------------|--------|----------|----------------|--------|-------------------|--------|-------------------------------|--------------|----------------|---------------------------------------|
| Employment, terms ¹ and conditions of | 9 (1) | 9 (1) | 9 (1) | 9 (1) | 9 (1) | 9 (1) | 9 (1) | 9 (1) | 9 (1) | 9A (1)* |
| Use of employment agencies | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9 (2) | 9A (2)* |
| Trade union ² membership | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9 (3) | 9A (3)* |
| Administrative ³ , occupational health, insurance or employment | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9 (4) | 9A (4)* |
| Pay of domestic and other workers | | | 10 (1) | | | | | | | |
| Employment of workers, apprentices, etc. | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | |
| Provision of commercial or dwelling units | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | |
| Supply of goods ⁴ , services, contracts, etc. | 11 (1) | 11 (1) | 11 (1) | 11 (1) | 11 (1) | 11 (1) | 11 (1) | 11 (1) | 11 (1) | |

NOTES

1. Same title, compensation, conditions of employment, compensation, insurance plans
2. Certain non profit organizations (religious, fraternal)
3. Free expression of opinion
4. Home delivery includes advertising, advertising or disseminating of money belonging to employer

NOTES-APPLICABILITY OF ACT

- Employment practices section does not apply to:
 - a) Certain non profit organizations (religious, fraternal)
 - b) Domestic employees and living in private home

A. HUMAN RIGHTS ACT
B. LABOUR STANDARDS CODE

NOVA SCOTIA

DISCRIMINATION PROMPTED

| PRACTICE | RACE | RELIGION | CREED | COLOUR | ETHNIC OR NAT. ORIGIN | SEX | AGE (40-65) | PHYSICAL HANDICAP |
|----------------------------------------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|-----------------------|-------------------------------------|------------------------------------------|--------------------|
| Employment terms and conditions of classification, referral, etc. by employment agency | A-8 (1) A-8 (2) | A-11A (1) ² A-11A (2) | A-11B ¹ A-11B ¹ | A-11B ¹ |
| Use of application forms, advertisements, pre-employment enquiries | A-8 (3) | A-11A (1) ² | A-11B ¹ | A-11B ² |
| Pay of tenures | | | | | | B-55 (1) | | |
| Trade union membership | A-9 | A-9 | A-9 | A-9 | A-9 | A-11A (2) | A-11B ¹ | A-11B ² |
| Professional, trade, business association | A-10 | A-10 | A-10 | A-10 | A-10 | A-11A (2) | A-11B ¹ | A-11B ² |
| Advertisement of applicants for volunteer services | A-11 (1) | A-11A (2) | A-11B ¹ | A-11B ² |
| "Publishing, signs", notices, symbols, etc. | | | | | | | | |
| Advertising with individuals or class of individuals | A-12A | A-12A | A-12A | A-12A | A-12A | A-12A | | |
| Provision of public services, facilities, accommodation | A-4 | A-4 | A-4 | A-4 | A-4 | A-11A (1) | | |
| Property conveyance | A-6 | A-6 | A-6 | A-6 | A-6 | A-11A (1) | | |
| Provision of housing ⁴ or commercial unit occupancy | A-5 (1) | A-11A (1) | | |

EXPLANATIONS

1. Question of home rule entities, insurance, insurance plan
2. Same rule application for employment, activity, association
3. Free application of option
4. Where entity is simple, non-charitable, non-profit entity in controlling the rest of which is occupied by landlord and family.

• Discrimination for any purpose prohibited (12 (1))

NON-APPLICATION OF ACT

– Employment practices section does not apply to
a) Domestic employees and living in a private
b) Certain non-profit groups (religious, ethnic)
– Volunteer services section does not apply to certain non-profit organizations (religious, ethnic)

A. ONTARIO HUMAN RIGHTS ACT
B. EMPLOYMENT STANDARDS ACT

ONTARIO

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | CREED | COLOUR | NATIONALITY | ANCESTRY | PLACE OF ORIGIN | SEX | MARITAL STATUS | AGE (40-55) |
|-------------------------------------------------|----------|----------|----------|-------------|----------|-----------------|-----------------------|-----------------------|-----------------------|
| Employment terms and conditions | A-1 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) ¹ | A-4 (1) ¹ | A-4 (1) ¹ |
| Advertising re: employment | A-1 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (4) | A-4 (2) | A-4 (2) ¹ | A-4 (2) ¹ | A-4 (2) ¹ |
| Use of application forms | A-4 (4) | A-4 (4) | A-4 (4) | A-4 (4) | A-4 (4) | A-4 (4) | A-4 (4) | A-4 (4) | A-4 (4) |
| Referral, etc. by employment agency | A-4 (5) | A-4 (5) | A-4 (5) | A-4 (5) | A-4 (5) | A-4 (5) | A-4 (5) ¹ | A-4 (5) ¹ | A-4 (5) ¹ |
| Trade union membership | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) | A-4a (1) |
| Professional association membership | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) | A-4a (2) |
| Display of emblem ² , symbols, signs | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) | A-1 (1) |
| Provision of public accommodation, services | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) | A-2 (1) ³ | A-2 (1) | A-2 (1) |
| Occupancy in housing or commercial units | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) ⁴ | A-3 (1) ⁴ | A-3 (1) ⁴ |
| Pay of males | | | | | | | B-25 (1) ⁵ | B-25 (1) ⁵ | B-25 (1) ⁵ |
| Pay of females | | | | | | | B-25 (1) ⁵ | B-25 (1) ⁵ | B-25 (1) ⁵ |

EXCEPTIONS

¹ Where basic skill qualification for employment

² Free expression of opinion not inconsistent with

³ Public decency

⁴ Where occupancy other than for owner and family is restricted to persons of same sex

⁵ Where difference due to seniority, merit, quality, quantity, experience

NON-APPLICATION OF ACT

- Limitations re: employment do not apply to
a) religious, philanthropic, educational, fraternal or social organization not operated for profit

b) Domestic employee in private home

HUMAN RIGHTS ACT

PRINCE EDWARD ISLAND

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | RELIGION | CREED | COLOUR | SEX | MARITAL STATUS | ETHNIC OR NATIONAL ORIGIN | POLITICAL BELIEF | AGE (18-65) | PHYSICAL HANDICAP |
|----------------------------------------------------------|-------|----------|-------|--------|-------|----------------|---------------------------|------------------|-------------|-------------------|
| Provision of Public Accommodation, Services, Facilities | 2 | 2 | | 2 | 2 | 2 | | | | |
| Occupancy Commercial or Self-Contained Dwelling | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | | | |
| Property Sales | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | | |
| Employment, Terms or Conditions of ² | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) ⁵ |
| Employment Agencies ² | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) ⁵ |
| Application Forms ² | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) ⁵ |
| Equal Pay ³ | 6(4) | 6(4) | 6(4) | 6(4) | 6(4) | 6(4) | 6(4) | 6(4) | 6(4) | 6(4) ⁵ |
| Membership in Employee Organization | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 ⁵ |
| Professional Business or Trade Association | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 ⁵ |
| Person, Agency Carrying Out Public Function ⁴ | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| Advertising ⁶ | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) |

EXCEPTIONS

- 1 structure having 2 or more housing units; self-contained unit in structure having 2 or more self-contained units
- 2 domestic employee and having in single family dwelling; exclusively religious, ethnic non-profit organizations
- 3 seniority systems; production performance systems
- 4 religious, ethnic non-profit organizations
- 5 bona fide retirement, pension, group insurance plan
- 6 free expression of opinion

NON APPLICATION OF ACT

- identification of facilities used by one sex
- display, publication by political, religious, national, non-profit organization
- philanthropic, fraternal, service groups in sex of membership
- qualifications
- bona fide qualification limitations
- trusts, deeds, agreements made before act comes into force

**CHARTER OF HUMAN RIGHTS
AND FREEDOMS**

QUEBEC

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | COLOUR | SEX | CIVIL STATUS | RELIGION | POLITICAL CONDITION | LANGUAGE | ETHNIC OR NATIONAL ORIGIN | SOCIAL CONDITION |
|----------------------------------------------------------------------------------|------|--------|-----|--------------|----------|---------------------|----------|---------------------------|------------------|
| Publishing of sign, symbol, etc. | 11 | 11 | 11 | 11 | 11 | 11 | 11 | 11 | 11 |
| Judicial Act re: goods, services offered to public | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 |
| Discriminatory clauses in judicial Act | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 |
| Access to Public Transport, Public Place (Hotel Restaurant, Theatre, etc.) | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 |
| Employment terms ² and conditions of | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 |
| Membership Association of Employees, Employers, Professional, Occupational Group | 17 | 17 | 17 | 17 | 17 | 17 | 17 | 17 | 17 |
| Employment Agencies | 18 | 18 | 18 | 18 | 18 | 18 | 18 | 18 | 18 |
| Equal Pay ³ | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 |

EXCEPTIONS

1. Lease of one room in dwelling where lessor and his family reside, and room not advertised to public.
2. Charitable, religious, political, educational non-profit organizations.
3. Seniority, experience, productivity, overtime systems.

A. SASKATCHEWAN BILL OF RIGHTS ACT
B. FAIR EMPLOYMENT PRACTICES ACT
C. FAIR ACCOMMODATION PRACTICES ACT

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | RELIGION | RELIGIOUS CREDENCE | COLOUR | SEX | NATIONALITY | ANCESTRY | PLACE OF ORIGIN |
|--------------------------------------------------------------------------------------|---------------------|-------------------|--------------------|-------------------|----------|-------------|----------|-----------------|
| Employment, terms and conditions of | B-3 | B-3 | B-3 | B-3 | B-3 | B-3 | B-3 | B-3 |
| Use of employment agencies that discriminate | B-4 | B-4 | B-4 | B-4 | B-4 | B-4 | B-4 | B-4 |
| Membership in trade unions | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 |
| Use of employment ¹ applications, advertisements pre-employment enquiries | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 |
| Carrying on any business, enterprise, occupation | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 |
| Ownership, occupancy of land | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 |
| Membership in professional, trade associations | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 |
| Enrolment in educational institution | A-11 ² | A-11 ² | A-11 | A-11 ² | A-11 | A-11 | A-11 | A-11 |
| Publication, display ³ of signs, symbols, emblems | A-12 (1) C-4 (1) | A-12 (1) | A-12 (1) | A-12 (1) | A-12 (1) | A-12 (1) | A-12 (1) | A-12 (1) |
| Provision of public accommodation, facilities, services | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 |

EXCEPTIONS

1. Same fair occupational qualification

2. Same that:

- a) is run by religious order or society
- b) enrolls a particular sex, creed, religion exclusively

3. Free expression of opinion

NON-APPLICATION OF ACTS

— Fair employment practices act not applicable to employer who is non-profit charitable, philanthropic, fraternal, religious, social organization, or an organization (non-profit) operated for welfare of religious or racial group

FAIR PRACTICES ORDINANCE

NORTHWEST TERRITORIES

DISCRIMINATION PROHIBITED

| PRACTICE | RACE | CREED | COLOUR | SEX | MARITAL STATUS | NATIONALITY | ANCESTRY | PLACE OF ORIGIN | PLACE OF RESIDENCE |
|------------------------------------------------------------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Employment, terms and conditions of employment application forms, advertisements, pre-employment inquiries | 3 (1) ¹ | 3 (2) |
| Trade union membership | 3 (3) | 3 (3) | 3 (3) | 3 (3) | 3 (3) | 3 (3) | 3 (3) | 3 (3) | 3 (3) |
| Provision of public accommodation, facilities, services and conveniences | 3 (4) | 3 (4) | 3 (4) | 3 (4) | 3 (4) | 3 (4) | 3 (4) | 3 (4) | 3 (4) |
| Publication of signs, notices, emblems, etc. | 4 (1) | 4 (1) | 4 (1) | 4 (1) | 4 (1) | 4 (1) | 4 (1) | 4 (1) | 4 (1) |
| Play of games | 4 (2) | 4 (2) | 4 (2) | 4 (2) | 4 (2) | 4 (2) | 4 (2) | 4 (2) | 4 (2) |

NOTE: APPLICATION OF ORDINANCE

- Employment discrimination in government do not apply to:
 - a) Domestic in private home
 - b) Non-profit charitable, philanthropic, educational, fraternal, religious, social organizations or organizations operated primarily to foster welfare of a religious or racial group
 - c) School or board of trustees re: hiring where religious instruction included in curriculum

EXEMPTIONS

- 1. Same title exemption and application
- 2. Free expression of opinion

YUKON TERRITORY

A. FAIR PRACTICES ORDINANCE
B. LABOUR STANDARDS ORDINANCE

| PRACTICE | | RACE | RELIGION | RELIGIOUS CRED | COLOUR | ANCESTRY | SEX | MARITAL STATUS | ETHNIC OR NAT. ORIGIN |
|-------------------------------------------------------------------------------------------------|---------|---------|----------|----------------|---------|----------|----------------------|----------------|-----------------------|
| Employment ¹ , terms and conditions of | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) | A-3 (1) |
| Use of application ¹ forms | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) | A-3 (2) |
| Trade union membership | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) | A-3 (3) |
| Provision of public accommodation, services, facilities | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) | A-4 (1) ² | A-4 (1) | A-4 (1) |
| Provision of occupancy in self-contained dwelling units | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) | A-4 (2) ² | A-4 (2) | A-4 (2) |
| Publication in newspapers or display on property one controls, of signs, symbols, emblems, etc. | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) | A-5 (1) |
| Pay of females | | | | | | | | B-12.1 (1) | |
| Pay of males | | | | | | | | | |

EXEMPTIONS

¹ Some fair qualification for employment

² Accommodation, services, facilities restricted to persons of same sex

NON-APPLICATION OF ACTS

- Employment practices section of law practice ordinance not applicable to:
 - a) Domestic service in private home
 - b) Non-profit charitable, philanthropic, educational, fraternal, religious, social organization or organizations for welfare of a religious or racial group
 - c) School board or trustee, where religious instruction in curriculum
- Occupancy provisions do not apply to apartment buildings with less than seven self-contained units

CANADIAN BILL OF RIGHTS

An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms

8-9 Elizabeth II, c. 44 (Canada)

[Assented to 10th August 1960]

Preamble

The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PART I

BILL OF RIGHTS

Recognition and declaration of rights and freedoms

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and

DÉCLARATION CANADIENNE DES DROITS

Loi ayant pour objets la reconnaissance et la protection des droits de l'homme et des libertés fondamentales

8-9 Elizabeth II, c. 44 (Canada)

[Sanctionnée le 10 août 1960]

Le Parlement du Canada proclame que la Préambule nation canadienne repose sur des principes qui reconnaissent la suprématie de Dieu, la dignité et la valeur de la personne humaine ainsi que le rôle de la famille dans une société d'hommes libres et d'institutions libres;

Il proclame en outre que les hommes et les institutions ne demeurent libres que dans la mesure où la liberté s'inspire du respect des valeurs morales et spirituelles et du règne du droit;

Et afin d'expliquer ces principes ainsi que les droits de l'homme et les libertés fondamentales qui en découlent, dans une Déclaration de droits qui respecte la compétence législative du Parlement du Canada et qui assure à sa population la protection de ces droits et de ces libertés,

En conséquence, Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète :

PARTIE I

DÉCLARATION DES DROITS

Reconnaissance et déclaration des droits et libertés

1. Il est par les présentes reconnu et déclaré que les droits de l'homme et les libertés fondamentales ci-après énoncés ont existé et continueront à exister pour tout individu au Canada quels que soient sa race, son origine

fundamental freedoms, namely,

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association; and
- (f) freedom of the press.

nationale, sa couleur, sa religion ou son sexe :

- a) le droit de l'individu à la vie, à la liberté, à la sécurité de la personne ainsi qu'à la jouissance de ses biens, et le droit de ne s'en voir privé que par l'application régulière de la loi;
- b) le droit de l'individu à l'égalité devant la loi et à la protection de la loi;
- c) la liberté de religion;
- d) la liberté de parole;
- e) la liberté de réunion et d'association, et
- f) la liberté de la presse.

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

Interprétation de la législation

- (a) authorize or effect the arbitrary detention, imprisonment or exile of any person;
- (b) impose or authorize the imposition of cruel and unusual treatment or punishment;
- (c) deprive a person who has been arrested or detained
 - (i) of the right to be informed promptly of the reason for his arrest or detention,
 - (ii) of the right to retain and instruct counsel without delay, or
 - (iii) of the remedy by way of *habeas corpus* for the determination of the validity of his detention and for his release if the detention is not lawful;
- (d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards;
- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.

criminel du droit à la présomption d'innocence jusqu'à ce que la preuve de sa culpabilité ait été établie en conformité de la loi, après une audition impartiale et publique de sa cause par un tribunal indépendant et non préjugé, ou la privant sans juste cause du droit à un cautionnement raisonnable; ou

(g) privant une personne du droit à l'assistance d'un interprète dans des procédures où elle est mise en cause ou est partie ou témoin, devant une cour, une commission, un office, un conseil ou autre tribunal, si elle ne comprend ou ne parle pas la langue dans laquelle se déroulent ces procédures.

Duties of
Minister of
Justice

3. The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the *Regulations Act* and every Bill introduced in or presented to the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

3. Le ministre de la Justice doit, en conformité de règlements prescrits par le gouverneur en conseil, examiner toute proposition de règlement soumise, sous forme d'avant-projet, au greffier du Conseil privé, selon la *Loi sur les règlements*, comme tout projet ou proposition de loi soumis ou présenté à la Chambre des communes, en vue de constater si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la présente Partie, et il doit signaler toute semblable incompatibilité à la Chambre des communes dès qu'il en a l'occasion.

Devoir du
ministre de la
Justice

Short title

4. The provisions of this Part shall be known as the *Canadian Bill of Rights*.

4. Les dispositions de la présente Partie *Titre abrégé* doivent être connues sous la désignation: *Déclaration canadienne des droits*.

Savings

5. (1) Nothing in Part I shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of this Act.

PART II

"Law of
Canada"
defined

(2) The expression "law of Canada" in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada.

5. (1) Aucune disposition de la Partie I ne doit s'interpréter de manière à supprimer ou restreindre l'exercice d'un droit de l'homme ou d'une liberté fondamentale non énumérés dans ladite Partie et qui peuvent avoir existé au Canada lors de la mise en vigueur de la présente loi.

Clause de
sauvegarde

(2) L'expression «loi du Canada», à la Partie I, désigne une loi du Parlement du Canada, édictée avant ou après la mise en vigueur de la présente loi, ou toute ordonnance, règle ou règlement établi sous son régime, et toute loi exécutoire au Canada ou dans une partie du Canada lors de l'entrée en application de la présente loi, qui est susceptible d'abrogation, d'abolition ou de modification par le Parlement du Canada.

Définition: «loi
du Canada»

*Jurisdiction of
Parliament*

(3) The provisions of Part I shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada.

(3) Les dispositions de la Partie I doivent s'interpréter comme ne visant que les matières qui sont de la compétence législative du Parlement du Canada.

*Jurisdiction du
Parlement*

VII - APPENDIX B

Acts

| | |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | Canada Labour Code, Part I (Fair Employment Practices) R.S.C., 1970, CL-1; and Part III (Standard Hours, Wages, Vacations and Holidays). |
| Alberta | <u>The Individual's Rights Protection Act</u> , S.A. 1972, c. 2; as amended 1973 c.61. |
| British Columbia | <u>Human Rights Code of British Columbia</u> , S.B.C., c. 119; as amended 1974, c. 87. |
| Manitoba | <u>The Human Rights Act</u> , C.C.S.M., c. H175, enacted by S.M. 1974, c. 65. |
| | <u>Employment Standards Act</u> , R.S.M. 1970 c. E110; as amended 1975 Bill 62. |
| New Brunswick | <u>Human Rights Code</u> , R.S.N.B. 1973, c. H-11. |
| | <u>Female Employees Fair Remuneration Act</u> , R.S.N.B. 1973, c. F-9. |
| Newfoundland | <u>The Newfoundland Human Rights Code</u> , R.S.N. 1970, c. 262; as amended 1973, Act No. 34 and 1974, Bill 114. |
| Nova Scotia | <u>Human Rights Act</u> , S.N.S. 1969, c. 11; as amended 1970, c. 85; 1971, c. 69, 1972, c. 65; and 1974, c. 46. |
| | <u>Labour Standards Code</u> , S.N.S. 1972, c. 10; as amended 1974, c. 29. |
| Ontario | <u>The Ontario Human Rights Code</u> , R.S.O. 1970, c. 318; as amended 1971, c. 50, s. 63; 1972, c. 119; and 1974, c. 73. |
| | <u>The Employment Standards Act</u> , 1974, S.O. 1974, c. 112. |
| Prince Edward Island | <u>Human Rights Code</u> , S.P.E.I. 1975, c. 72. |
| Québec | <u>Charter of Human Rights and Freedoms</u> , Bill 50, 1975. |

Saskatchewan

The Saskatchewan Human Rights Commission Act, S.S. 1972, c. 108; as amended 1973, c. 94.

The Fair Employment Practices Act, R.S.S. 1965, c. 293; as amended 1972, c. 43.

The Fair Accommodation Practices Act, R.S.S. 1965, c. 379; as amended, S.S. 1972, c. 42.

The Saskatchewan Bill of Rights Act, R.S.S. 1965, c. 378; as amended, S.S. 1972, c. 104.

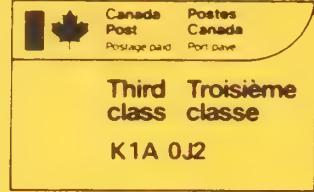
Northwest Territories

Fair Practices Ordinance, O.N.W.T. 1966, c. 5; as amended 1974, c. 4.

Yukon Territory

Fair Practices Ordinance, R.O.Y.T. 1971, c. F-2; as amended 1974, c. 7.

Labour Standards Ordinance, R.O.Y.T. 1971, c. L-1; as amended 1973, c. 13; and 1974 c. 9.



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LEGISLATION



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Legislative Analysis

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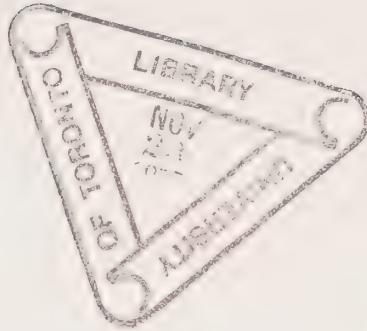
LABOUR CANADA

Hon. John Munro

Minister

T.M. Eberlee

Deputy-Minister



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Foreword

During 1976 two provinces, Manitoba and New Brunswick, extended the provisions of their human rights acts to include new grounds upon which discrimination is prohibited. Manitoba also revised enforcement procedures in its act.

The Parliament of Canada gave first reading to Bill C-25, the Canadian Human Rights Act. Besides containing anti-discriminatory provisions, the bill also would control the government's gathering of personal information, and would outlaw telephone hate messages.

Summaries of these new developments follow.

The present publication was authored by Cal McKerral.

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(Cette publication est également disponible en français.)

INDEX

CONTENTS

| | Page |
|-----------------------------------------------------------------------------------|------|
| I Federal and Provincial Jurisdiction Over Human Rights | 1 |
| II The Canadian Bill of Rights | 2 |
| III Major Legislative Developments During 1976 | 4 |
| IV Analysis of Legislation | 8 |
| 1. General | 8 |
| (a) Publications, Signs, Display of Various Representations | 8 |
| (b) Public Accommodations, Services, Facilities | 9 |
| (c) Association with Minority Groups | 11 |
| (d) Contracts | 11 |
| 2. Employment and Employment-Related Subjects | 12 |
| (a) Employers | 12 |
| (b) Employment Agencies | 15 |
| (c) Application Forms, Advertisements and Inquiries in Connection with Employment | 15 |
| (d) Trade Unions | 18 |
| (e) Employers' Associations | 20 |
| (f) Professional, Business and Trade Associations | 20 |
| (g) Equal Pay | 21 |
| 3. Occupancy, Property Sales | 26 |
| (a) Occupancy | 26 |
| (b) Conveyance of Property | 28 |
| 4. Where the Acts do not Apply | 29 |
| 5. Special Programs | 29 |
| 6. Protection of Complainants | 30 |
| 7. Administration of Acts | 32 |
| 8. Human Rights Commissions | 32 |
| 9. Enforcement - Initiation | 33 |

| | Page |
|---------------------------------------------|------|
| 10. Enforcement - Inquiries | 34 |
| 11. Enforcement - Orders | 36 |
| 12. Prosecution and Penalties | 37 |
| V Tables | 39 |
| VI Appendix A - The Canadian Bill of Rights | |
| VII Appendix B - Acts | |

I - FEDERAL AND PROVINCIAL JURISDICTION OVER HUMAN RIGHTS

Sections 91 and 92 of the British North America Act, which provide for the division of legislative powers between the Parliament of Canada and the provincial Legislatures, make no express mention of the words "human rights" or "civil liberties".

The question therefore arises as to which of the two levels of government - the federal Government or the provincial Governments - has jurisdiction over human rights.

In order to determine who has jurisdiction over human rights, it is, first, necessary to classify them so as to make possible the distribution of legislative power between the federal and provincial Governments according to the different types of human rights.

Human rights can be classified as follows: "political rights" - traditionally including freedom of association, assembly, speech, press and religion; "economic rights" - the right to own property, and the right not to be deprived thereof without compensation, freedom of contract, the right to withhold one's labour, etc.; "legal rights" - freedom from arbitrary arrest, right to a fair hearing, right to counsel, etc.; "egalitarian rights" - right to employment, accommodation, education, and so on, without discrimination by reason of race, colour, sex, creed, etc.

It is generally recognized that political rights, in the sense of "public rights", are essentially within the competence of the Parliament of Canada. A distinction must be made, however, between the "restriction" and "protection" of such rights. The federal Parliament appears to have the sole authority to restrict political rights on the basis of its jurisdiction over criminal law (Saumur v. The City of Québec (1953), 2 S.C.R. 299; Henry Birks & Sons v. The City of Montreal (1955), S.C.R. 799; Switzman v. Elbling (1957), S.C.R. 285). The provincial Legislatures are competent, however, to protect political rights, by virtue of their jurisdiction over civil rights within the province (Oil, Chemical Workers International Union v. Imperial Oil Ltd. (1963), S.C.R. 584). But it is equally of the competence of the federal Parliament to deal with the protection of political rights by legislating in relation to matters falling within its jurisdiction (i.e., the 1960 Canadian Bill of Rights).

As regards the economic, legal and egalitarian rights, they are subject to either federal or provincial jurisdiction, or to both concurrently, depending on whether the activities with which those rights are connected are themselves within the legislative competence of the federal Parliament or of the provincial Legislatures.

II - THE CANADIAN BILL OF RIGHTS

The Canadian Bill of Rights became law on August 10, 1960. Unlike the American Bill of Rights, it is not included in nor does it form part of the Constitution (i.e., the British North America Act). Furthermore, the Canadian Bill of Rights applies only to federal legislation; it has no effect on provincial laws. Under it, any federal law infringing one of the declared rights and freedoms shall be declared inoperative. This sanction, however, does not apply to those laws which expressly provide that they shall operate notwithstanding the Canadian Bill of Rights.

The Canadian Bill of Rights declares and recognizes that the following human rights and freedoms exist: freedom of religion, speech, assembly, association and the press; the right to equality before the law and the protection of the law; the right to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law. The above rights and freedoms exist without discrimination by reason of race, national origin, colour, religion or sex. The Bill of Rights also guarantees such rights as the right to counsel and a fair hearing, the presumption of innocence, protection against cruel punishment, the right to an interpreter and certain rights of an arrested person.

However, the Canadian Bill of Rights has not, in practice, had any substantive effect. In most cases where the Bill was invoked the courts held that it did not apply. Canadian appellate courts, in particular, have treated the Bill as, at the most, providing rules for construction of federal legislation. This has been so notwithstanding the retroactive character of the Bill of Rights in its declaration that no law of Canada may derogate from it unless so expressly declared, and notwithstanding also the direction to the courts to construe and apply federal legislation so as not to infringe the declared rights and freedoms.

On the whole, there have been strong judicial views expressed that the Parliament of Canada did not intend, by enacting the Bill of Rights, to alter its own previously enacted laws which may be in conflict with the Bill. The Courts have said instead that the Parliament of Canada would have included a proviso in the Bill itself that it was its will to render the Bill applicable to federal laws passed prior to the Bill's enactment.

The limited scope of application of the Canadian Bill of Rights, and its resulting ineffectiveness in protecting human rights, gave rise, a few years ago, to a suggestion by the federal Government that the fundamental rights of all Canadians would be more effectively guaranteed by a constitutionally entrenched Bill of Rights. Such an amendment to our Constitution would declare invalid any existing or future law inconsistent with the Bill. Suffice it to say that this proposal of the federal Government did not meet with the provincial Governments' approval, a condition precedent to any constitutional change.

That proposal, and others made in recent years, have one thing in common: all point to the need for protecting human rights more effectively than presently does the Canadian Bill of Rights. Major disagreements still exist, however, with regard to the best mutually acceptable method of providing such protection.

III - MAJOR LEGISLATIVE DEVELOPMENTS DURING 1976

On November 29, 1976, Federal Justice Minister Ron Basford introduced Bill C-25, the Canadian Human Rights Act.

The Bill, a substantially revised version of its predecessor, Bill C-72, prohibits discriminatory practices and provides individuals with rights of access to and control over the use of personal information about them that the federal government uses for administration purposes.

The Bill also contains provisions designed to restrain the Government's own information gathering activities.

Anti-discrimination provisions of the Bill would make race, national or ethnic origin, colour, religion, age, sex, marital status, physical handicap and a conviction for which a pardon has been granted, grounds upon which discrimination is prohibited.

The prohibitions would cover all federal departments and agencies and any business or industry under federal jurisdiction (i.e., chartered banks, airlines, railways, etc.).

The activities to which the prohibitions would apply are:

- provision of services, facilities or accommodation generally available to the public;
- provision of commercial premises or residential accommodation;
- provision of jobs, pay and promotions and their advertisement.

The Act would also ban the transmission of hate messages by telephone. Any person or group of persons in contravention of this provision would be subject to a cease and desist order. Failure to comply would become grounds for contempt of court, penalties for which are up to one year in jail or a fine not exceeding \$5,000.

The equal pay for equal work formula in Bill C-72 was changed and now equal work is defined as work of equal value. This change reflects the view that "work of equal value" affords a greater degree of protection against sex discrimination in the workplace.

A Human Rights Commission would be established in order to enforce the Act. The Commission would consist of a minimum of five and a maximum of eight members appointed by the Governor-in-Council.

Removal of a member from the Commission would require an address to the House of Commons and the Senate.

The Commission could not only investigate complaints but could initiate them also. It could appoint expert tribunals to adjudicate in anti-discrimination cases.

The tribunals would be empowered to issue enforceable orders. Failure to comply with such an order could become grounds for contempt of court.

The Commission would also be empowered to carry out public educational activities.

Manitoba amended its Human Rights Act. "Age", "source of income", and "family status" are added to the anti-discriminatory grounds in the display of any notice, sign, symbol, emblem or other representation. Also, the prohibition extends beyond discrimination and now includes exposing or tending to expose a person to hatred.

Public accommodation, facilities, etc., must not be denied to any person unless reasonable cause for denial or discrimination exist. Reasonable cause does not include the race, nationality, religion, colour, sex, age, marital status, or ethnic or national origin of a person. Sex can be a reasonable cause if it relates to public decency.

In accordance with the law, refusal of any public accommodation, service, etc., is permitted where a person under the age of majority is not entitled to use the accommodation, service, etc., in question.

Family status and marital status are added to the grounds upon which occupancy of commercial or housing units cannot be denied.

"Family status" is now a prohibited ground for discrimination in employment and employment-related activities, and "political belief" and "family status" are added grounds in advertising for employment, pre-employment enquiries, and activities of employment agencies.

Distinctions on the basis of age, sex, family status or marital status can be made in the case of any employee benefit plan or any contract which provides such a plan if the Commission is satisfied that the distinctions are not discriminatory. Distinctions can also be made regarding life insurance, accident and sickness insurance, and certain annuities where the distinctions are not discriminatory and the insurance or annuity could not be provided without the distinction being made.

The Human Rights Commission has three options after having investigated a complaint. It may request the Minister to appoint a Board of Adjudication to hear and decide the complaint; it may endeavour to effect a settlement and failing settlement may request the Minister to appoint a Board of Adjudication; or it may recommend that the Minister commence a prosecution for an offence under the Act.

For purposes of investigation, the Executive Director, any person with the Executive Director's written authorization, or the Board of Adjudication have access during normal business hours to any land, residence or business premises of any person with respect to whom there is reasonable and probable grounds to believe that such access will assist the investigation of the complaint.

Inspection of specific documents, correspondence and records relevant to the complaint may be inspected and copies or extracts may be made.

Where access is denied, ex parte application to a County Court or Provincial Judges Court may be made for an order granting access.

Subject to appeal to the Court of Queen's Bench, the Board of Adjudication has exclusive jurisdiction and authority to determine any question of fact or law regarding whether or not the Act has been contravened, or for the making of any order pursuant to a decision rendered.

Where the Board of Adjudication decides that a party has contravened any provision of the Act, it may; make an order to secure compliance, order the offending party to make compensation to the aggrieved for lost income or expenses incurred by reason of contravention of the Act, or it may order the offending party to pay a penalty or exemplary damages to compensate for suffered damages in respect of the feelings or self-respect of the aggrieved.

The Board of Adjudication may file its order with the Court of Queen's Bench. Such filing causes the order to become a judgement of that Court. Previously, only that part of an order directing payment of lost wages could become a judgement of the Court.

An order cannot be filed with the Court until appeal procedures have expired.

"Political belief" and "family status" are added to the list of grounds, the contravention or attempted contravention of which, can be cause for an injunction to be issued by the Court of Queen's Bench for restraint.

New Brunswick amended its Human Rights Act to add "physical disability" as a ground upon which discrimination is prohibited in all activities outlined in the Act, except for equal pay.

On June 30, 1976, Quebec gave assent to Bill 56, which amends the Charter of Human Rights and Freedoms.

The Bill provides that sections 11 (discriminatory publications), 13 (discriminatory clauses in juridical acts), 16 (discrimination in employment), 17 (discrimination by occupational associations) and 19 (equal pay) do not apply to pension plans, life insurance plans or any other plan or scheme of social benefits unless the discrimination is founded on race, colour, religion, political convictions, language, ethnic or national origin or social condition.

The new provisions have effect from June 27, 1975 until a date determined by proclamation of the Lieutenant-Governor-in-Council.

IV - ANALYSIS OF LEGISLATION

1. General

(a) Publications, Signs, Display of Various Representations

All jurisdictions in Canada except the federal have enacted prohibitions against publication or display of discriminatory signs, symbols, and other representations.

Further, the provisions include (except for Alberta and British Columbia) a prohibition against permitting others to do so. This would apply in a case where, for example, one person allowed another to place a discriminatory sign on land which the former owned or controlled.

The jurisdictions which prohibit these practices and the grounds upon which the discrimination is prohibited, are listed below.

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Alberta | race, religion, beliefs, colour, sex, age (45-65), ancestry, place of origin |
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin, political belief |
| Manitoba | race, nationality, religion, colour, sex, marital status, ethnic or national origin, age, source of income, family status |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex, physical disability |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | any purpose |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status |
| P.E.I. | race, religion, creed, colour, ethnic or national origin, sex, marital status, political belief |

| | |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------|
| Québec | race, colour, sex, civil status, religion, political convictions, language, ethnic or national origins, social condition |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

All of the jurisdictions listed above (except the Yukon) state explicitly that the prohibition against discriminatory publications, signs, etc., is not meant to limit the free expression of opinion.

Alberta allows a sign, display, etc., to express any bona fide qualification for employment, and states also, as does Manitoba, that identification of facilities customarily used by one sex does not violate the provision.

Manitoba law states explicitly that the provisions do not apply to the display of a notice, sign, symbol, etc., displayed to identify facilities customarily used by one sex.

New Brunswick allows exceptions based on bona fide qualifications pertinent to sex or marital status, as determined by the Human Rights Commission.

Québec's guarantee of freedom of expression is contained in an early section of the general provisions of the Charter of Human Rights and Freedoms.

(b) Public Accommodations, Services, Facilities

All jurisdictions except the federal have enacted prohibitions against discrimination in the areas of public accommodations, services, and other public facilities.

The jurisdictions which have enacted provisions in the areas mentioned, and the grounds upon which discrimination is prohibited are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------|
| Alberta | race, religious beliefs, colour, sex, ancestry, place of origin |
| British Columbia | race, religions, colour, sex, ancestry, place of origin (The grounds listed are not intended by the Act to be limiting.) |
| Manitoba | race, nationality, religion, colour, sex, age, ethnic or national origin, marital status |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, sex |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status |
| P.E.I. | race, religion, creed, colour, ethnic or national origin, sex, marital status, political belief |
| Québec | race, colour, sex, civil status, religion, political convictions, language, ethnic or national origin, social condition |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

British Columbia, Manitoba, and Ontario allow exceptions to the prohibition of the provision of public accommodations, services, or other facilities on the grounds of sex, where public decency is at issue.

British Columbia also allows an exception on grounds of sex for purposes of determining insurance benefits or premiums.

Manitoba allows an exception for persons under the age of majority where this is permissible by law or regulation.

In the Yukon, discrimination on the grounds of sex is excepted where the accommodation, service, or facilities are customarily used by one sex.

In New Brunswick, discrimination on the grounds of sex and marital status is excepted where there is a bona fide qualification, as determined by the Commission.

(c) Association with Minority Groups

Two jurisdictions, i.e., Nova Scotia, and Prince Edward Island, provide a comprehensively worded prohibition against discrimination because of a person's association with minority groups.

The Nova Scotia prohibition reads:

"No person shall discriminate against any individual or class of individuals in any manner prescribed by this Act because of the race, religion, creed, colour or ethnic or national origin of any person or persons with whom the individual or class of individuals associates."

The Prince Edward Island section is similar, but with the added grounds of sex, marital status and political belief.

Alberta prohibits discrimination in employment practices against any person because of the race, etc., of that person or of any other person.

New Brunswick prohibits discrimination because of race, etc., without referring to a particular person.

(d) Contracts

Manitoba prohibits discrimination in the making available, and in the terms and conditions of, contracts offered to the public generally.

The grounds upon which discrimination is forbidden are race, nationality, religion, colour, sex, age, marital status, and ethnic or national origin. Distinctions on the basis of age, sex, family status or marital status can be made in the case of life insurance, accident and sickness insurance, and certain annuities where the distinctions are not discriminatory and the insurance or annuity could not be provided without the distinction being made.

Québec provides that no one may in a juridical act stipulate a clause involving discrimination (i.e., race, sex, colour, civil status, religion, political convictions, language, ethnic or national origins, social conditions). Such a clause is considered to be without effect.

In British Columbia and Alberta, regulations may be made requiring that contracts with the Crown, municipalities, school boards, and hospital boards contain clauses which ensure no discrimination be allowed in accordance with the Human Rights Acts of those provinces.

2. Employment and Employment-Related Subjects

(a) Employers

All jurisdictions in Canada have enacted prohibitions against discrimination in employment practices. The wording of the prohibitions varies somewhat from one jurisdiction to another, but in essence all the Acts say that discrimination is prohibited in the actual engaging of a person for work, and also in the terms and conditions of that person's being employed. This includes such matters as promotion, transfer, etc.

The term "employer" in most cases includes those such as employers' organizations, employment agencies, and others, i.e., individuals, corporations or organizations which act on behalf of employers.

The jurisdictions and the various grounds upon which discrimination in employment is prohibited are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | race, national origin, colour, religion |
| Alberta | race, religious beliefs, colour, sex, age (45-65), ancestry, place of origin, marital status |
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin, political belief (The grounds enumerated here are not meant to be limiting.) |

| | |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Manitoba | race, nationality, religion, colour, sex, age, marital status, ethnic or national origin, political beliefs, family status |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex, physical disability |
| Newfoundland | race, religion, religious creed, sex, political opinion, colour, ethnic, national or social origin, age (19-65), assignment, attachment or seizure of pay |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, age (40-65), physical handicap, sex |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status, age (40-65) |
| P.E.I. | race, religion, creed, colour, ethnic or national origin, sex, marital status, political belief, age (18-65), physical handicap |
| Québec | race, colour, sex, religion, civil status, political convictions, language, ethnic or national origin, social condition |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin, place of residence |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

Alberta, New Brunswick, Newfoundland and the Yukon allow an exception to all the prohibited grounds enumerated where there is a bona fide qualification for employment. Alberta also allows an exception on grounds of age or marital status, where the operation of a bona fide insurance or pension plan is concerned.

British Columbia allows an exception on the grounds of sex where public decency is concerned, and on the basis of age (45-65) where the operation of a bona fide insurance, pension or seniority plan is involved. British Columbia also allows exceptions where a criminal or summary conviction relates to the employment and where any act respecting Canadian citizenship constitutes reasonable cause.

Manitoba allows exceptions where age, marital status or political beliefs constitute a bona fide qualification for employment, and where age must be considered in the operation of a bona fide insurance, retirement or seniority plan. The age of majority is also valid grounds for exception.

In New Brunswick, age and physical disability are grounds for exception where the operation of a bona fide pension, retirement or insurance plan is concerned and all grounds can be excepted for work, depending on the nature of the work, as determined by the Human Rights Commission.

Newfoundland allows an exception where sex is a bona fide occupational qualification.

Nova Scotia provides that age is a valid exception in the case of the operation of a bona fide pension, retirement or insurance plan, and that physical handicap may be taken into account where handicap relates to a bona fide qualification for employment.

Ontario allows that sex, marital status and age (40-65) may be taken into account where a bona fide qualification for employment is concerned.

Newfoundland allows an exception to the rule regarding attachment or seizure of pay where the employees' duties would include collecting or depositing money belonging to the employer.

Prince Edward Island allows exceptions for an exclusively religious or ethnic organization not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin as the case may be. Also, bona fide retirement, pension, or group insurance plans are not affected with respect to physical handicap or age.

Québec allows exceptions for charitable, philanthropic, religious or educational nature of a non-profit institution, or institutions devoted exclusively to the well-being of ethnic groups.

In the Northwest Territories, all enumerated grounds except "place of residence" may be taken into account as being a bona fide occupational qualification.

(b) Employment Agencies

The Canada Labour Code and the Acts of Newfoundland and Saskatchewan forbid an employer, in the having or recruitment of persons for employment, to use an employment agency that practices discrimination against persons seeking employment. All these provisions are similar.

In Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Québec, the employment agency is specifically forbidden to discriminate against any person seeking employment.

Prince Edward Island also forbids employment agencies from accepting discriminatory inquiries from any employer or prospective employee.

(c) Application Forms, Advertisements and Inquiries in Connection with Employment

All the Acts, except Québec, with some differences in wording, prohibit any person from using or circulating an application form or from publishing an advertisement in connection with employment or prospective employment or from making any written or oral inquiry in connection with employment that expresses either directly or indirectly any limitation, specification or preference as to the grounds on which discrimination is prohibited under the various Acts.

Several of the Acts (Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Saskatchewan and Northwest Territories) add to the provision summarized above a specific prohibition against requiring an applicant to furnish information to answer questions or to give particulars covering race, etc.

The Alberta, Manitoba, New Brunswick and the Northwest Territories provisions contain, after the clause "that expresses...any limitation, specification or preference," a second clause, "or that requires an applicant to furnish any information concerning race...."

The comparable Nova Scotia clause is "that directly or indirectly expresses any limitation, specification, preference or invites information, as to race...." The Saskatchewan clause is "that contains a question or a request for particulars as to the race...."

The British Columbia Act adds, in regard to advertisements, after the word "publish" the words "or display, or cause or permit to be published or displayed".

The Saskatchewan Act prohibits the use of any application form, the publication of any advertisement and the making of any inquiry that:

expresses either directly or indirectly a limitation, specification or preference...or an intent to make or give such limitation, specification or preference.

Ontario has separate sections prohibiting discriminatory application forms and inquiries. These are as follows:

"No employer shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any words, symbol or other representation that indicate directly or indirectly that race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin is or may be a limitation, specification or preference for a position or employment.

"No person shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any advertisement for a position or employment for or on behalf of an employer:

- (a) that contains any words, symbols or other representation; or
- (b) that is under a classification or heading,

indicating directly or indirectly that race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin, is or may be a limitation, specification or preference for the position or employment.

"No person shall use or circulate any form of application for employment or make any written or oral inquiry that expresses either directly or indirectly any limitation, specification, or preference as to race, creed, colour, nationality, ancestry or place of origin of any person or that requires an applicant for employment to furnish any information concerning race, creed, colour, nationality, ancestry or place of origin."

The Ontario Code permits an exception to the above provisions where a limitation, specification or preference as to sex or marital status is based on a bona fide occupational qualification and requirement for the position.

The specific grounds upon which discriminatory application forms, pre-employment inquiries, advertisements, etc., are prohibited are as follow:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | race, national origin, colour, religion |
| Alberta | race, religious beliefs, colour, sex, age (45-65), ancestry, place of origin (sex, age and marital status may be asked for on an application form) |

| | |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin (sex, marital status and age may be asked for on an application form, but political beliefs must not be asked for) |
| Manitoba | race, nationality, religion, colour, sex, age, marital status, ethnic or national origin, political belief, family status |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex, physical disability |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic, national or social origin, age (19-65), assignment, attachment, seizure of pay, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, age (40-65), physical handicap, sex |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status, age (40-65) (sex, marital status and age may be asked for on an application form) |
| P.E.I. | race, religion, creed, colour, sex, marital status, ethnic or national origin, political belief, age (18-65), physical handicap |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

Many jurisdictions allow exceptions to the prohibited practices on various grounds.

In Alberta, an exception is allowed on all prohibited grounds relating to information requirements from a job applicant, where there is a bona fide qualification for employment.

Manitoba allows exceptions on the grounds of sex, age and marital status in both advertising, etc., regarding employment and pre-employment inquiries. Age may be excepted where the operation of a bona fide insurance, retirement or seniority plan are concerned, and where the age of majority is an issue.

New Brunswick allows exceptions to all prohibited grounds in both advertising, use of application forms, etc., and in pre-employment inquiries where a bona fide occupational qualification is concerned. Exceptions to all the provisions in this area respecting age and physical disability are allowed where the operation of a bona fide pension, retirement, or insurance plan are concerned.

Newfoundland allows exceptions to all the prohibited grounds where a bona fide occupational qualification exists, and where bona fide pension, retirement, or employee insurance plans are affected. Also, the same exception as above under "(a) Employers" applies re: attachment, seizure or assignment of wages.

In Nova Scotia, exceptions exist for age provisions where there is a bona fide pension, retirement, or insurance plan, and for physical handicap, where the handicap relates to the employment, activity or association.

For advertising respecting employment, Ontario allows exceptions to the grounds of sex, marital status and age (40-65) where there is a related bona fide qualification for employment.

Saskatchewan allows exceptions on all grounds where a bona fide occupational qualification is concerned.

In the Yukon, all grounds are excepted for a bona fide qualification for employment.

The Prince Edward Island provisions do not apply to a domestic employee and living in a single family home, nor to an exclusively religious or ethnic organization or an agency of such an organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, if religion, creed, colour, sex, marital status or ethnic or national origin is a reasonable occupational qualification.

(d) Trade Unions

All the Acts forbid discrimination by a trade union on any of the prohibited grounds. The wording of the federal, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Saskatchewan, the Yukon and the Northwest Territories Acts is similar. They forbid a trade union to exclude any person from full membership or expel or suspend or otherwise discriminate against any of its members or discriminate against any person in regard to his employment by an employer.

The British Columbia, Manitoba and Ontario Acts forbid a trade union to exclude from membership or expel or suspend any person or member or discriminate against any person or member.

Alberta prohibits a trade union to exclude any person from membership therein, or expel or suspend any member thereof, or discriminate against any person or member.

The Québec provision is as follows:

"No one may practice discrimination in respect of the admission, enjoyment of benefits, suspension or expulsion of a person to, of or from an association of employers or employees or any professional corporation or association of persons carrying on the same occupation."

New Brunswick permits discrimination by trade unions where the discrimination is based upon a bona fide occupational qualification. In British Columbia, New Brunswick and Newfoundland, the provisions prohibiting discrimination by trade unions do not apply to bona fide retirement or pension plans; minimum service requirements of such plans; or bona fide group or employee insurance plans. Finally, non-profit organizations are not covered by provisions prohibiting discrimination by unions in Manitoba, Newfoundland and Prince Edward Island.

In all jurisdictions, the grounds upon which discrimination by trade unions is prohibited are the same as the grounds upon which discrimination in employment practices is prohibited, with two exceptions.

In Nova Scotia, prohibitions against sex discrimination apply to both trade union membership and employers. In the Northwest Territories, prohibitions against discrimination on the basis of place of residence apply to employers but not to trade union membership.

Exceptions

Exceptions to the prohibitions against discrimination by trade unions exist in several provinces.

British Columbia allows an exception where a criminal or summary conviction relates to the membership in a trade union.

New Brunswick allows exceptions to all prohibited grounds where a bona fide occupational qualification is concerned, and also allows, as does Nova Scotia, an exception where the age of a person relates to the operation of a bona fide pension, retirement or insurance plan.

Newfoundland allows an exception on all grounds where the operation of a bona fide retirement, insurance, or pension plan is concerned.

(e) Employers' Associations

Alberta, British Columbia, Manitoba, New Brunswick, and Québec have enacted prohibitions against membership discrimination in employers' associations. These prohibitions as well as the exceptions allowed are identical to the rules governing the activities of trade unions, as outlined above.

(f) Professional, Business and Trade Associations

In addition to provisions respecting discriminatory practices by employers' organizations, other jurisdictions have the various prohibitions apply to other groups as well. These are as follows:

| | |
|------------------|------------------------------------------------------------------------------------|
| Alberta | occupational associations |
| British Columbia | occupational associations |
| Manitoba | occupational associations |
| New Brunswick | trade, professional and business associations |
| Nova Scotia | professional, trade and business associations |
| Saskatchewan | professional and trade associations |
| P.E.I. | professional, business or trade associations |
| Québec | professional corporation or association of persons carrying on the same profession |

The Nova Scotia and New Brunswick Acts make it unlawful for a professional association or a business or trade association to exclude any individual from full membership or expel or suspend or otherwise discriminate against any of its members.

A "professional association" is defined to include an organization of persons which by an enactment, agreement or custom, has power to admit, suspend, expel or direct persons in the practice of any occupation or calling.

A "business or trade association" is similarly an organization of persons with power to admit, suspend, expel or direct persons in relation to any business or trade.

In New Brunswick, the application of statutory provisions restricting membership to Canadian citizens or British subjects is not affected.

Alberta defines the term "occupational association" as "any organization other than a trade union or employers' organization in which membership is a prerequisite to carrying on any trade, occupation or profession".

The Ontario Code forbids self-governing professions to exclude from membership or expel or suspend any person or member or discriminate against any person or member because of any of the prohibited grounds.

(g) Equal Pay

All jurisdictions have enacted laws which require equal pay for equal work without discrimination on the grounds of sex.

In six jurisdictions equal pay provisions are contained in the labour code -- the Canada Labour Code, Part III, Division II.I; the Ontario Employment Standards Act, Part VI; the Saskatchewan Labour Standards Act, Part V; the Nova Scotia Labour Standards Code (sections 55-57); the Yukon Labour Standards Ordinance; and the Manitoba Employment Standards Act (Part IV). In six other jurisdictions equal pay provisions form part of human rights legislation -- the Alberta Individual's Rights Protection Act, the British Columbia Human Rights Act, the Québec Charter of Human Rights and Freedoms, the Newfoundland, Prince Edward Island Human Rights Codes and the Northwest Territories Fair Practices Ordinance.

New Brunswick's equal pay law is not specific; it is deemed to be included in the general anti-discrimination provisions in the Human Rights Code.

Newfoundland forbids any employer or person acting on his behalf to establish or maintain differences in wages between male and female employees, employed in the same establishment who are performing, under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility, except where such payment is made pursuant to a seniority system or a merit system.

The Québec Charter of Human Rights and Freedoms states that an employer must without discrimination, grant equal salary or wages to the member of his personnel who perform equivalent work at the same place.

Prince Edward Island forbids all employers or persons acting on their behalf from discriminating between employees by paying one employee at a rate of pay less than the rate of pay paid to another employee employed by him for substantially the same work, the performance of which requires equal education, skill, experience, effort and responsibility and which is performed under similar working conditions, except where payment is made pursuant to a seniority system, merit system, or a system that measures earnings by quantity or production or performance. The seniority system and the quality or quantity systems cannot be discriminatory, however.

The Alberta Act forbids an employer to employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer (or vice versa) for similar or substantially similar work. The work is deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar or substantially similar. Reduction of an employee's rate of pay in order to comply with the legislation is prohibited.

The federal, Ontario, Saskatchewan and Manitoba provisions also protect persons of either sex against discrimination in the payment of wage rates. These provinces, and also Nova Scotia, lay down criteria for determining whether the work performed is the same or similar.

In the federal jurisdiction, an employer is forbidden to establish or maintain differences in wages between male and female employees employed in the same industrial establishment, who are performing, under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility.

In Ontario and Saskatchewan, the employer is prohibited from paying a female employee at a lesser rate of pay than that paid to a male employee (or vice versa) for the same work (similar work in Saskatchewan) performed in the same establishment, the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions. Nova Scotia's provisions are identical to Ontario's except that they only apply to female employees.

In the federal, Alberta, Ontario and Saskatchewan jurisdictions the employer is forbidden to reduce the rate of pay of an employee in order to comply with the equal pay requirement. Further, in Ontario employee or employer organizations may not cause or attempt to cause an employer to pay wages that contravene the equal pay provisions of the Act.

In Manitoba an employer is forbidden to pay the employees of one sex wages on a scale different from that on which wages are paid to employees of the other sex in the same establishment, if the work required of, and done by, employees of each sex is the same or substantially the same. By way of clarification, the Act states that the work of male and female employees is to be deemed the same or substantially the same if the job, duties, responsibilities, or services that the employees are called upon to perform are the same or substantially the same in kind or quality and substantially equal in amount.

All the Acts, where applicable, make it clear that a difference in rates of pay based on a factor other than sex does not constitute failure to comply with their requirements. In Nova Scotia, however, the employer must establish that such a factor justifies a different rate of pay.

The Ontario and Saskatchewan Acts contain specific exceptions in addition to the general exception permitting a differential based on any factor other than sex. In both provinces, differences in rates of pay based on: a seniority system; a merit system; or in Ontario, a system that measures earnings by quantity or quality of production; do not constitute discrimination within the terms of the Act.

In Québec, a difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.

In all provinces equal pay legislation is applicable to provincial government employees. The federal Act covers employees of Crown corporations but does not apply to other federal public servants. Rates of pay of classified public servants are set by classification, according to the type of work performed, without any distinction based on sex.

The procedure laid down for the enforcement of equal pay provisions may be invoked upon complaint by the aggrieved person in New Brunswick, Newfoundland and Prince Edward Island. Québec allows a complaint from the aggrieved person or group of persons to the "Commission des droits de la personne".

In Alberta and Nova Scotia, investigation may be initiated upon complaint by the aggrieved person or upon the initiative of the director appointed under the Act. The provisions of the Saskatchewan Act require the director, where he receives a directive from the Minister or a request from the aggrieved person, to advise the Human Rights Commission of the complaint and to request the Commission to conduct a formal inquiry into the matter.

In the federal, Ontario and Nova Scotia jurisdictions enforcement no longer depends solely on a formal complaint. The equal pay provisions are enforced through inspection by the field staff of the respective Departments of Labour.

A complaint is to be registered in Newfoundland, New Brunswick and Prince Edward Island with the Minister of Labour (of Manpower and Industrial Relations in Newfoundland); and in British Columbia, Manitoba and Saskatchewan with a designated officer of the Department of Labour (the director). In Alberta, complaints are made to the Human Rights Commission. The Alberta and British Columbia legislation imposes a six-month time limit for making a complaint.

In all jurisdictions, except Ontario, Nova Scotia and the federal industries, the legislation provides for an initial informal investigation into a complaint, usually by an officer of the Department of Labour. In Alberta, such an investigation is made by the Human Rights Commission.

In Newfoundland and New Brunswick, if the person designated to make the inquiry is unable to settle the matter, a board or commission of one or more persons may be appointed. In Newfoundland the commission is called the Human Rights Commission. (In Newfoundland, the Minister may, in addition, appoint a commission when he deems it desirable to have an inquiry made into any matter within the purview of the Act.)

In Alberta, the Human Rights Commission will refer a complaint that is not settled under the initial investigation to a Board of Inquiry (appointed by the Minister) to investigate the matter. In British Columbia and Saskatchewan, the director may refer the matter to the Human Rights Commission, a permanent body established under the Act. In Alberta and British Columbia, the Commission may dismiss a complaint at any stage of proceedings if it is of the opinion that it is without merit.

In Prince Edward Island, if the Human Rights Commission cannot effect a settlement, it must make a report to the Minister who may appoint a board of inquiry (one or more persons). If the board does not effect a settlement, it makes recommendations to the Commission, which then reports to the Minister. The Minister may then make such orders as he deems fit.

In Québec, where a complaint has been made for the Commission, the Commission attempts to effect a settlement. If this attempt is unsuccessful, the Commission may then recommend the cessation of any act, payment of indemnity, etc., and seek an injunction if the recommendation is not complied with.

The recommendations of the board, commission, committee or referee, as the case may be, may be put into effect by an order of the Minister except under the Alberta, British Columbia, Saskatchewan and Québec Acts. Under the Alberta Act, the recommendations of the board are made to the Commission. If the Commission is unable to effect a settlement on the course of action to be taken with the person against whom the finding was made, the Commission must deliver all material pertaining to the complaint to the Attorney General who may apply to the Supreme Court for an order. The Human Rights Commission must issue an order and in Saskatchewan it may issue an order if it finds that there has been a contravention of the Act.

In Newfoundland, the order of the Minister may be appealed to the Supreme Court. Under the Alberta Act, a decision of the board of inquiry may be appealed to the Supreme Court. An appeal of a decision or order made by the Saskatchewan Human Rights Commission may be made to a judge of the Court of Queen's Bench. In British Columbia, an order of the Human Rights Commission may be enforced by filing it in the Supreme Court of the province.

In British Columbia a board of inquiry may direct the person whom it has found to be in contravention of the Act to cease or rectify the contravention. It may also include in its order a direction to pay the wages lost as a result of the contravention. In Saskatchewan, where

the Human Rights Commission finds that a contravention of the Act has been made it may order compliance with the provisions including the payment of compensation to the aggrieved party for previous service that was the subject of the complaint. Every person who violates the provisions of the federal Act is guilty of an offence and is liable on summary conviction to a fine, imprisonment, or both. The employer may also be directed to pay arrears of wages to which the employee was entitled. In Alberta the judge may order compensation for the person discriminated against for all or any part of any wages or income lost or expenses incurred by reason of the discriminatory action.

In Ontario, the Director of Employment Standards (who, under the direction of the Minister of Labour, administers the Employment Standards Act) has authority to determine the amount of wages owing to an employee, where in his opinion an employer has contravened the equal pay provisions. The employer must be given a chance to be heard. For purposes of enforcement of the Act, this amount is to be deemed unpaid wages.

Where the director cannot determine the amount owing, the Minister may, on his recommendation, appoint a board of inquiry. The board is required to hear the parties and to recommend to the director the course of action that ought to be followed.

Under the wage collection procedure of the Employment Standards Act, the director is empowered to collect unpaid wages for an employee up to a maximum of \$2,000 and the employer is subject to a penalty of 10 per cent of the amount owing. An employer who has paid the wages and penalty as required has the right to apply to the Minister for a review, whereupon a person designated by the Minister is required to hold a hearing, giving the employer full opportunity to make submissions, and to decide the amount owing to the employee. If the employer is dissatisfied with the Minister's decision, he may appeal the decision to the Supreme Court on the grounds that it is erroneous in point of law or in excess of jurisdiction.

The legislation in Nova Scotia is similar to that in Ontario. Where the Director of Labour Standards finds that an employer has not paid equal wages, he may direct the employer to pay the amount due to the employee to the Labour Standards Tribunal. If he disputes the director, the employer may apply to the Tribunal for a determination of the amount. If the Tribunal finds the employer is indebted to the employee, it must order the employer immediately to pay over to the Tribunal the amount of pay found to be unpaid. The person to whom the order is directed must forthwith comply with the order.

Provision is made in all the Acts for prosecution in the courts as a last resort. Failure to comply with the Act or an order is made an offence punishable by a fine. In Newfoundland, Ontario and Saskatchewan, the convicting magistrate must order the payment of wages due, in addition to imposing a fine. Under the federal Act, an employer convicted of an offence under the Act may, in addition to any other penalty, be made liable for payment of wages found to be due.

A number of the laws provide that a person claiming to be aggrieved by an alleged contravention of the Act has a choice of initiating court proceedings or of making a complaint. Some Acts stipulate that the right of an employee to take any other proceeding for recovery of wages to which he is entitled is not barred by reason of any remedy provided for in the Act.

The Northwest Territories Fair Practices Ordinance, which is a Human Rights Code, provides for equal pay for equal work. The Ordinance forbids an employer to employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer for similar or substantially similar work. The work is deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar or substantially similar. Reduction of an employee's rate of pay in order to comply with the legislation is prohibited. A difference in rates based on a factor other than sex does not constitute discrimination.

Enforcement is initiated by complaint of the aggrieved person to the officer appointed by the Commissioner of the Northwest Territories to deal with such matters. The Commissioner may then appoint an officer to inquire into the complaint. If settlement is not reached through conciliation, the officer must recommend to the Commissioner the action that should be taken with respect to the complaint. The Commissioner may issue whatever order he thinks necessary to put the recommendations into effect. A person affected by the order may appeal it within 10 days to a judge of the Territorial Court, whose decision is final.

In the Yukon Territory, sections of the Labour Standards Ordinance prohibit an employer from paying a female employee at a lesser rate of pay than that paid to a male employee or vice versa for "the same work performed under similar working conditions" except where such payment is made pursuant to a seniority system; a merit system; a system measuring earnings by quality or quantity of production; or a differential based on any factor other than sex. Reductions of an employee's pay in order to comply with this legislation is not permitted. Employers' and employees' organizations are prohibited from causing or attempting to cause an employer to pay his employees rates of pay that contravene the legislation. Where the employer has not paid the wages required, the Labour Standards Officer may determine the amount owing the employee and such amount shall be deemed to be unpaid wages. Where the officer is unable to effect a determination, the matter is referred to the Advisory Board for investigation. The board, upon review of the matter recommends what action should be taken.

3. Occupancy, Property Sales

(a) Occupancy

All provinces and the two territories have enacted anti-discrimination provisions in the areas of property rental and occupancy. The wording and extent of the provisions vary from one jurisdiction to another, with some common characteristics throughout.

The Yukon and Northwest Territories limit occupancy provisions to cover only self-contained apartment dwelling units. The Yukon's provisions cover only apartment buildings with more than six dwelling units.

Alberta, Newfoundland and Nova Scotia extend coverage to occupancy (Alberta uses the term "tenancy") in commercial or self-contained dwelling units. Nova Scotia adds "or housing unit used to provide rental accommodation".

Québec's prohibitions are general in nature; they outlaw discrimination in any juridical act. This includes occupancy agreements.

Manitoba and Ontario refer to occupancy in any commercial or housing accommodation, while New Brunswick's provisions cover occupancy in any commercial or dwelling unit.

Prince Edward Island's provisions cover occupancy in any dwelling unit.

British Columbia and Saskatchewan have relatively wide coverage; British Columbia provides for tenancy in any space... available, while Saskatchewan's provisions cover any interest in lands or occupancy thereof.

The grounds upon which discrimination in the provision of occupancy is prohibited in the various jurisdictions are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Alberta | race, religious beliefs, colour, sex, ancestry, place of origin |
| British Columbia | race, religion, colour, sex, marital status, ancestry, place of origin |
| Manitoba | race, nationality, religion, colour, sex, age, ethnic or national origin, source of income, marital status, family status |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex, physical disability |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, sex |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex |

| | |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------|
| P.E.I. | race, religion, creed, colour, sex, ethnic or national origin, marital status, political belief |
| Québec | race, colour, sex, civil status, religion, political convictions, language, ethnic or national origin, social condition |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

In Manitoba, an exception is allowed on the grounds of sex where the occupancy of the housing (except for the owner and his family) is restricted to one sex. Also, a preference for elderly persons is allowed.

New Brunswick allows exceptions on the grounds of sex or marital status where a bona fide qualification (as determined by the Human Rights Commission) exists.

Nova Scotia allows exceptions on all prohibited grounds where the dwelling unit is a single, non-advertised, non-listed room in a dwelling the rest of which is occupied by the landlord and the landlord's family.

Ontario allows a similar exception to that allowed by Manitoba.

In Prince Edward Island the sex discrimination prohibitions in occupancy do not apply to a housing unit where the unit is in a structure having two or more units; or to a self-contained dwelling unit, where such unit is in a structure having two or more self-contained units.

The Québec prohibitions do not apply to a person who leases a room in a dwelling if the lessor or his family resides in such dwelling, leases only one room, and does not advertise the room by public notice.

In the Yukon, an exception is allowed where the dwelling unit is in a building limited to persons of one sex.

(b) Conveyance of Property

In British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan, prohibitions against discrimination in the conveyance of property have been enacted.

In all the above jurisdictions the grounds upon which discrimination is prohibited coincide with the prohibited grounds respecting occupancy, except that in the case of Manitoba, family status is not included as grounds upon which discrimination is prohibited in the conveyance of property.

4. Where the Acts do not Apply

The federal Act and those of the Northwest and Yukon Territories do not apply to the Crown. Those of all other jurisdictions do. The federal provisions do, however, apply to crown corporations and agencies.

With some variation in wording, most Canadian jurisdictions exclude non-profit charitable, philanthropic, fraternal, religious and social organizations from their employment practices provisions. Newfoundland limits this lack of application to non-profit religious and fraternal organizations. In Alberta such organizations are exempted only from the provisions relating to the publishing or display of signs, notices, emblems, etc.

Nova Scotia also excludes these groups from the volunteer services provisions of its Human Rights Act.

British Columbia excludes the above-mentioned organizations from all the provisions of its Human Rights Code where they give preference to members of the identifiable group or class.

New Brunswick allows no exclusion for such organizations or corporations.

Alberta, Manitoba, Nova Scotia, Newfoundland, Ontario, Prince Edward Island, Québec, the Northwest Territories and Yukon state that employment provisions do not apply to domestic servants employed in a private home. In Nova Scotia, Newfoundland and Prince Edward Island, the stipulation "and living in" a private home is added.

In Alberta, employment practices provisions do not apply to a farm employee who resides in the home of the farmer who employs him.

5. Special Programs

In Manitoba, Nova Scotia, New Brunswick, Ontario, British Columbia and the Northwest Territories the Human Rights Commission (the Commissioner in the Northwest Territories) may approve special programs designed to promote the welfare of minority groups.

In Nova Scotia, the Commission may approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals, and any approved programs shall be deemed not to be a violation of the prohibitions of this Act.

Québec's Commission must establish a program of education and information designed to promote an understanding and acceptance of the objects and provisions of the Charter of Human Rights and Freedoms.

In New Brunswick, on the application of any person, or on its own initiative, the Commission may approve a program to be undertaken by any person designed to promote the welfare of any class or persons. At any time before or after approving a program, the Commission may make inquiries concerning the program, vary the program, impose conditions on the program, or withdraw approval of the program as the committee thinks fit. Anything done in accordance with a program approved pursuant to this section shall not be a violation of the provisions of this Act.

In Ontario, the Commission may, "upon such conditions or limitations and subject to revocation or suspension, approve in writing any special plan or program by the Crown, any agency therefore, any person to increase the employment of members of a group or class of persons because of the race, creed, colour, age, sex, marital status, nationality or place of origin or the members of the group or class of persons".

In British Columbia under the Human Rights Code the Commission may approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals and any approved program shall be deemed not to be in contravention of any of the provisions of the Act.

In the Northwest Territories, the Commissioner may "approve programs designed to promote the welfare of any class of individuals, and any such program shall be deemed not to be a violation of the provisions of this Ordinance".

In Manitoba, the Commission may approve any special plan by the Crown, any Crown agency, or any person to increase the employment of members of a group or class of persons on the basis of the race, nationality, religion, colour, sex, age, marital status, ethnic or national origin of the members of the group or class of persons.

6. Protection of Complainants

All jurisdictions contain provisions forbidding reprisals against complainants.

The federal and Saskatchewan provisions are similar, with slight variations in wording.

Federal -

No employer or trade union shall discharge, expel or otherwise discriminate against any person because he has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

More detailed provisions are found in Ontario, Manitoba and British Columbia.

Ontario and Manitoba -

No person shall,

refuse to employ or continue to employ any person;

threaten to dismiss or threaten to penalize in any other way any person in regard to his employment or any term or condition thereof;

discriminate against any person in regard to his employment or any term or condition thereof; or

intimidate or coerce or impose any pecuniary or other penalty upon any person;

on the ground that such person,

has made or may make a complaint under this Act;

has made or may make a disclosure concerning the matter complained of;

has testified or may testify in a proceeding under this Act; or

has participated or may participate in any other way in a proceeding under this Act.

British Columbia -

The Human Rights Code of British Columbia states that no person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty upon, or otherwise discriminate against, any person because that person complains, gives evidence, or otherwise assists in respect of the initiation of a complaint or other proceeding under that Act.

The Alberta, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island Acts contain a different provision covering discrimination in rental practices as well as employment. As an example, the Newfoundland provision states:

No person, employer or trade union shall evict, discharge, suspend, expel or otherwise discriminate against any person because he had made a complaint...(rest as in federal provision).

7. Administration of Acts

The Minister of Labour is responsible for fair practices legislation in seven jurisdictions - federal and six provinces. In Nova Scotia, Manitoba and Saskatchewan it is the Attorney General, in Newfoundland it is the Minister of Manpower and Industrial Relations. (The Alberta, Manitoba, Nova Scotia, Québec and Saskatchewan Acts do not actually specify the Minister responsible.) In both the Northwest Territories and the Yukon, the Commissioner is responsible for the fair practices legislation.

Subject to the direction of the Minister, a director administers the federal, British Columbia and Newfoundland Acts and a Human Rights Commission the Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan Acts. The Prince Edward Island Act is administered by the Minister of Labour and Manpower Resources. The Ordinances in the Northwest Territories and the Yukon are administered by the "officer appointed by the Commissioner to inquire into complaints under the Ordinance".

In British Columbia, Nova Scotia and Saskatchewan, a director is responsible for the actual administration. The Alberta, New Brunswick and Ontario Human Rights Commissions also have directors (although this is not specified in the New Brunswick or Ontario legislation).

8. Human Rights Commissions

All provinces provide for Human Rights Commissions.

Besides providing for a permanent Commission of at least three members, the Newfoundland Act refers to a Human Rights Commission, which is an ad hoc body of one or more members appointed as a board of inquiry.

All Commissions except Québec's, which is appointed by the National Assembly, are appointed by the Lieutenant-Governor-in-Council. The Prince Edward Island Commission has three members, and Québec's at least seven. The Newfoundland, New Brunswick, Nova Scotia, and Ontario Commissions are to have three or more members and the Saskatchewan, not less than three; the other three provinces do not specify a number. The Saskatchewan Commissioners are appointed for a five-year renewable term; Nova Scotia Commissioners for a specific renewable term; and in Manitoba, the Lieutenant-Governor-in-Council may determine the term of office. Prince Edward Island provides for reappointment, but terms must be staggered so that one Commissioner retires each year.

A director may be appointed in Alberta and Saskatchewan, and must be appointed in Nova Scotia, Newfoundland and British Columbia. In Saskatchewan, the director is the chief executive officer and secretary of the Commission, and in Nova Scotia he is the chief executive officer and a member, with the status of a deputy minister.

All provide for the appointment of other staff, usually under the Civil Service Act.

Under the British Columbia Code, the Minister is to appoint a director who is to act as chief executive officer of the Commission and as registrar for the execution of complaints under the Act. The Minister also appoints persons to a panel who shall be eligible to serve on boards of inquiry.

In Newfoundland, the director is executive director of the Commission. Manitoba provides for boards of adjudication which are appointed by the Attorney General. These boards provide an investigative function. In cases where the Commission is unable to effect a settlement, the matter may be referred to the board of adjudication through the Minister for settlement.

9. Enforcement - Initiation

All the Acts operate through a complaint process. The Alberta and Nova Scotia Acts provide, in addition, for the investigation of a case where the Commission "has reasonable grounds for believing that a complaint exists". In Ontario, the Commission may initiate a complaint where it has reason for believing that any person has contravened any of the sections prohibiting discriminatory practices. In Manitoba the Commission may investigate on its own initiative.

In most jurisdictions the complaint must be made by the aggrieved person in writing, usually in the form prescribed.

In Ontario the complaint may be made by "any person who has reasonable grounds for believing that any person has contravened a provision of the Act". Where a complaint is made by other than the aggrieved person, the Commission may refuse to file the complaint unless the aggrieved person consents.

In Saskatchewan any person may make a complaint either orally or in writing.

In most jurisdictions the complaint must be dealt with, at least at the first stage of investigation. In the federal jurisdiction, Newfoundland, and the Territories it may be investigated. The British Columbia, Alberta and New Brunswick Commissions may at any stage of the proceedings dismiss a complaint that is without merit.

Alberta and British Columbia set a time limit on complaints - six months from the alleged contravention of the Acts. In Manitoba the time limit is one year.

Complaints are made to the director in the federal jurisdiction, Newfoundland and British Columbia, to the officer appointed by the Commissioner in each of the Territories and to the Commission in the remaining provinces.

10. Enforcement - Inquiries

All the Acts provide for the settlement of complaints, if possible, by conciliation and persuasion. They provide for an initial informal investigation into a complaint by an officer who is directed to "endeavour to affect a settlement".

Depending on jurisdiction, the investigation officer may be an officer of the Department or the Commission or any other person.

In both the Northwest Territories and the Yukon where the officer fails to settle the complaint he may, where he feels the complaint has merit, recommend to the Commissioner the action that should be taken with respect to the complaint.

In the other jurisdictions, where the informal conciliation fails, a more formal inquiry including a hearing, by a board, whether ad hoc or permanent, is provided for.

A board under the federal, Alberta, British Columbia, Prince Edward Island, New Brunswick, Newfoundland, Nova Scotia and Ontario legislation is an ad hoc body, consisting of one or more persons. It is referred to in the federal Act as an industrial inquiry Commission. In Newfoundland the inquiry may be made either by the permanent Human Rights Commission or by an ad hoc Human Rights Commission consisting of one or more persons. In Saskatchewan the inquiry is conducted by the permanent Human Rights Commission.

In Manitoba the Human Rights Commission has three options after having investigated a complaint. It may request the Minister to appoint a Board of adjudication to hear and decide the complaint; it may endeavour to affect a settlement and failing settlement may request the Minister to appoint a Board of adjudication; or it may recommend that the Minister commence a prosecution for an offence under the Act.

Québec provides that the Commission may appoint a person other than its own personnel to make an investigation and report to it.

The board or commission is appointed by the Minister in Newfoundland and Nova Scotia, by the Minister on the recommendation of the director in the federal jurisdiction, and by the Minister on the recommendation of the Commission in Alberta, Prince Edward Island, New Brunswick and Ontario. In Ontario the Commission is required to recommend whether or not a board should be appointed. In British Columbia the director may refer the dispute to a board of inquiry through the Minister. In Québec and Saskatchewan the Commission makes its own decision. The Saskatchewan Commission must report to the Minister whether it is appointing a board or not; if none is appointed, the Minister may do so.

Four of the Acts (Alberta, New Brunswick, Nova Scotia and Ontario) require the Minister to communicate the names of the members of the board of inquiry to the parties to the complaint. Except in Nova

Scotia, this is to be done "forthwith". In Nova Scotia, the Minister must also communicate to the parties the terms of reference of the board. The Ontario Act specifies who are 'parties' to the proceedings.

All the boards and commissions have the powers required to make a proper investigation and determine their procedure. In Alberta and Ontario the Acts outlining proper procedures apply. All Acts but the Act of Québec provide that all parties must be given full opportunity to present evidence and make representations. Alberta and Manitoba expressly provide the right to legal counsel.

The Nova Scotia Act states that a board must conduct "a public inquiry" into the matter referred to it.

In Ontario, the members of the board of inquiry must not have taken part in any previous investigation of the complaint. The board cannot communicate with any party without giving notice of an opportunity for all to participate. If it seeks legal advice from an independent adviser, it must communicate the nature of the advice to the parties in order that they may make submissions as to the law.

The Alberta Act is the only Act which sets a time limit for the board's proceedings. Under that Act, a board of inquiry is required to report to the Administrator within 14 days after its appointment, exclusive of Saturdays and holidays, or within such longer period as the Minister may approve. The board must state in its report whether it found the complaint to be justified or not.

In the federal jurisdiction, Manitoba and Newfoundland, when the board or commission finds the complaint justified by evidence, it is required to recommend to the Minister the course that ought to be taken with respect to the complaint. In New Brunswick, recommendations are made to the Commission, which in turn makes recommendations to the Minister.

The federal and New Brunswick Acts state that the recommendations may include reinstatement with or without compensation for loss of employment.

In Alberta, the board must report to the Commission whether it finds the complaint to be justified or not, and make its recommendations where it finds the complaint justified in whole or in part.

In Nova Scotia, where the matter is settled, the board must report the terms of settlement to the Commission with any comment the board deems appropriate.

Where the matter is not settled and the board finds that the complaint is supported by "a reasonable preponderance" of the evidence, it must report to the Human Rights Commission on the course that ought to be taken. The Human Rights Commission must recommend to the Minister any action necessary to give effect to the recommendations of the board.

In British Columbia, Ontario and Saskatchewan the Commission or board does not make recommendations but issues an order itself.

11. Enforcement - Orders

Except in Québec, provision is made for orders requiring compliance. It is an offence to violate such an order.

In the federal jurisdiction, Newfoundland and Nova Scotia, upon receipt of the board's or commission's recommendations, the Minister may issue an order to put them into effect. In the federal jurisdiction, the Minister must furnish the persons affected with a copy of the recommendations and may publish them as he sees fit.

In Manitoba, a board of adjudication may issue orders for compliance, compensation and exemplary damages.

The Manitoba and Newfoundland Acts provide a right of appeal from an order to the Court of Queen's Bench and the Supreme Court, respectively.

A board of adjudication in Manitoba may file its order with the court of Queen's Bench, thus making it an order of the Court.

In New Brunswick, the Human Rights Commission is authorized to issue an order to put into effect the recommendations of the board of inquiry. The order may include reinstatement with or without compensation for loss of employment. The Commission must furnish a copy of the board's recommendations to each of the persons affected and may, if the Minister deems it advisable, publish the recommendations in the manner it sees fit.

In British Columbia, if a board of inquiry decides that the Act has been contravened, it must issue an order directing the person to cease the activity in question, and may order the person concerned to take remedial action. This may include payment of lost wages and payment of damages not exceeding \$5,000. Such an order is final and may be enforced by filing a copy in the Supreme Court or a County Court.

In Saskatchewan, where the Commission finds the complaint to be justified, and the matter has not been settled in the meanwhile, it may order the contravening party to do whatever the Commission considers full compliance and to rectify any injury or to make compensation for it.

A decision or order of the Commission may be appealed to the Court of Queen's Bench.

In Ontario, the board of inquiry must decide if the Act has been contravened and may order the guilty party to comply with the Act and to rectify any injury or make compensation for it. This order may be appealed to the Supreme Court on questions of law or fact or both. The Minister is entitled to be heard in any appeal.

In Alberta, the Commission has 30 days from the report of the board of inquiry to effect a settlement regarding the course of action with the violator. If settlement is not reached it must then immediately hand its files and records to the Attorney General, who may, within 30 days, apply to the Supreme Court for an order.

The judge may order the violator to do any or all of the following: to cease the contravention and refrain in the future from the same or a similar contravention; to make available to the aggrieved person the rights, opportunities or privileges denied; to compensate for all or part of wages or income lost or expenses incurred; to do anything else the judge considers proper to place the aggrieved person in the position he would have been but for the contravention; to pay fines.

In the Northwest Territories and the Yukon, the Commissioner, after he has received the recommendations of the officer, may issue whatever order he thinks necessary to put the recommendations into effect. A person affected by the order may appeal it within 10 days to a judge of the Territorial Court, whose decision is final.

12. Prosecution and Penalties

Violation of any provision of the Act or failure to comply with any provision of the Act or of an order made under the Act is made an offence for which a person is liable on summary conviction to a fine. Alberta does not refer to offences - see "orders" above. In Québec, fines are imposed under the Summary Conviction Act.

Fines that may be imposed:

Maximum

| <u>Individuals</u> | <u>Others</u> | <u>Jurisdiction</u> |
|--------------------|---------------|------------------------------|
| \$ 100 | \$ 500 | Federal |
| | | Newfoundland |
| | | Northwest Territories |
| | | Yukon |
| \$ 200 | \$1,000 | Alberta |
| \$ 500 | \$1,000 | Nova Scotia |
| \$ 500 | \$2,000 | New Brunswick |
| \$1,000 | \$5,000 | Ontario, British Columbia |

Minimum-Maximum

| | | |
|---------------|---------------|--------------|
| \$100-\$1,000 | \$500-\$5,000 | Manitoba |
| \$100-\$ 500 | \$200-\$2,000 | P.E.I. |
| \$100-\$ 500 | \$400-\$2,000 | Saskatchewan |

The Acts of all jurisdictions except British Columbia (does not apply in Alberta) state that no prosecution for an offence under the Act shall be instituted without the written consent of the Minister. In Manitoba, the prosecution may be commenced on the information of the Commission or any person alleging that he or any class of persons, or member of that class, has been denied, abridged or restricted of rights under the Act.

In the Northwest Territories, in a prosecution for an offence, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified.

Under the British Columbia Act, a complaint may not be received or a prosecution commenced after six months have elapsed after the commission of the alleged offence.

In the Nova Scotia Act, the general principle is laid down that in any prosecution it shall be sufficient for conviction if a "reasonable preponderance of evidence" supports a charge that the accused has done anything prohibited by the Act or has refused or neglected to comply with an order made under the Act.

All the Acts except the Act of Québec expressly state that court action for an offence under the Act may be instituted against a trade union or employers' organization in the name of the union or organization, and that the union or organization is liable for the acts of any of its officers, etc., within the scope of his authority. The Nova Scotia Act states that for the purposes of any prosecution, professional associations and business or trade associations shall be deemed to be corporations.

Six statutes (federal, Manitoba, New Brunswick, Newfoundland, Saskatchewan, Northwest Territories and Yukon) further direct that a court may, in addition to imposing a fine, order the employer to pay compensation equivalent to the remuneration lost and to reinstate the employee who has been suspended, transferred, laid off or discharged in violation of the Act.

The Newfoundland Act stipulates that the magistrate, in ordering payment of lost wages and reinstatement, must give due consideration to all circumstances of the case, including any wages or other remuneration earned by the employee with another employer. For the Alberta provision - see orders above.

V - TABLES

The following tables are designed to serve as a rapid reference to the main provisions of the Acts, insofar as prohibited practices are concerned. Included are exceptions allowed in the case of certain practices, and outlines of cases where the Act does not apply.

In using the tables, the reader will see the various practices listed on the left, while the grounds upon which discrimination is prohibited are listed across the top. Where the co-ordinates meet, the space is either blank or it will contain a reference. A blank space indicates no prohibition, while a reference indicates a prohibition and the section of the appropriate Act where the provision may read in detail.

Where the provisions are contained in more than one Act, the reference is preceded by "A", "B", etc. In the case of Saskatchewan, for example, the various prohibited practices are found in three separate Acts; hence, "A", "B", and "C".

A footnote numeral found at the extreme left under "Practices" indicates that a noted exception applies to all prohibited grounds, while a footnote found in a space to the right indicates an exception on a selected ground or grounds only.

FEDERAL

A. CANADA LABOUR CODE - PART I
FAIR EMPLOYMENT PRACTICES
B. CANADA LABOUR CODE - PART III - STANDARDS

Discrimination Prohibited

| Practice | Race | National | Colour | Religion | Sex |
|------------------------------------------------------------------------------------------------|--------|----------|--------|----------|-----------|
| Employment, terms and conditions of | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) |
| Use of employment agencies that discriminate | A-5(2) | A-5(2) | A-5(2) | A-5(2) | A-5(2) |
| Use of employment application forms, advertisement advertisements, pre-employment enquiries | A-5(5) | A-5(5) | A-5(5) | A-5(5) | A-5(5) |
| Membership in trade unions | A-5(3) | A-5(3) | A-5(3) | A-5(3) | A-5(3) |
| Pay of males | | | | | B-38.1(1) |
| Pay of females | | | | | B-38.1(1) |

NON-APPLICATION OF ACT

- Employment practices provisions (other than equal wages) do not apply to:
 - a) Employer with fewer than five employees
 - b) Non-profit charitable, philanthropic, fraternal, religious, social organization, non-profit organizations which foster religious or racial group

Discrimination Prohibited

| Practice | Race | Religious Beliefs | Colour | Sex | Age(45-65) | Ancestry | Place of Origin | Marital Status |
|--------------------------------------------------------------------|---------|-------------------|---------|-------------------|-------------------|----------|-----------------|----------------|
| Employment, terms and conditions of | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) ¹ | 6(1) | 6(1) | 6(1) 1 |
| Advertising, application re: preference for applicant (employment) | 7(1)(a) | 7(1)(a) | 7(1)(a) | 7(1)(a) | 7(1)(a) | 7(1)(a) | 7(1)(a) | 7(1)(a) |
| Requirement of ² information on application form | 7(1)(b) | 7(1)(b) | 7(1)(b) | | | | 7(1)(b) | 7(1)(b) |
| Membership in trade union, employers, occupational association | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 |
| Publishing ^{2,4} display of signs, symbols, emblems | 2(1) | 2(1) | 2(1) | 2(1) ³ | 2(1) | 2(1) | 2(1) | 2(1) |
| Provision of public accommodation, facilities | 3 | 3 | 3 | 3 | | 3 | 3 | |
| Tenancy in commercial, or self-contained dwelling unit | 4 | 4 | 4 | 4 | | 4 | 4 | |
| Pay of males | | | | | 5(1)(b) | | | |
| Pay of females | | | | | 5(1)(a) | | | |

EXCEPTIONS

1 Operation of bona fide insurance, pension plan
2 Where a bona fide qualification for employment

3 Where bona fide qualification for employment
4 Identification of facilities customarily used
by one sex
Free expression of opinion

NON-APPLICATION OF ACT

- Limitations re: employment, advertising, etc. re: employment do not apply to:
 - a) Domestic employee in private home
 - b) Farm employee who resides in private home of farmer who employs him
- Limitations re: display of signs, symbols, etc. Do not apply to
 - non-profit political, religious, or common ancestry or place of origin organizations

| Practice | Race | Religion | Colour | Sex | Marital Status | Age (45-65) | Ancestry | Place of Origin | Political Belief |
|--------------------------------------------------------------------------------------------|---------|----------|-------------------|------------------------|----------------|-------------------|----------|-----------------|------------------|
| *Employment, terms ^{2,3} and conditions of | 8(1) | 8(1) | 8(1) ¹ | 8(1) | 8(1) | 8(1) ⁴ | 8(1) | 8(1) | 8(1) |
| Preference, limitation in application forms, advertisements, inquiries re: job applicant | 7(a) | 7(a) | 7(a) | 7(a) | 7(a) | 7(a) | 7(a) | 7(a) | 7(a) |
| Requirement of information by job applicant | 7(b) | 7(b) | 7(b) | | | | 7(b) | 7(b) | |
| Publishing, signs, etc. ⁷ | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) |
| *Membership in trade ³ union, employer's associations, occupational association | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) |
| *Provision of public accommodation, service, facility | 3(2)(a) | 3(2)(a) | 3(2)(a) | 3(2)(b) ^{1,5} | | | 3(2)(a) | 3(2)(a) | |
| Sale of property, interest in property | 4 | 4 | 4 | 4 | 4 | | 4 | 4 | 4 |
| Tenancy, terms of tenancy | 5 | 5 | 5 | 5 | 5 | | 5 | 5 | |
| Pay of males and females | | | | 6 | | | | | |

EXCEPTIONS

¹Public decency
²Where any act re: Canadian citizenship constitutes reasonable cause

³Where criminal or summary conviction relates to employment, membership
⁴Operation of bona fide insurance, pension, seniority plan
⁵Determination of insurance premiums of benefits
⁶Shared accommodation

⁷Free expression of opinion
*Enumerated grounds not intended to be limiting

NON-APPLICATION OF ACT

- Any charitable, philanthropic, educational, fraternal, religious, or social organization (non-profit) having as a primary purpose the promotion of interests and welfare of an identifiable class or group characterized by common race, religion, age, sex, marital status, political belief, colour, ancestry, place of origin may give preference to members of the identifiable group or class.

MANITOBA

A. HUMAN RIGHTS ACT
 B. EMPLOYMENT STANDARDS ACT

Discrimination Prohibited

| Practice | Race | Nationality | Religion | Colour | Sex | Age | Marital Status | Ethnic or Nat. Origin | Political Beliefs | Source of Income | Family Status |
|----------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Employment, terms and conditions of referral by employment agency | A-6(1)(a) A-6(1)(b) |
| Membership, etc. in trade union, employer's organization, occupational association, advertising re. employment | A-6(1)(c) A-6(7), (3) | A-6(1)(c) A-6(2), (3) |
| pre-employment enquiries, use of application forms | A-6(4) |
| Classification, referral by employment agency | A-6(5) |
| Contracts offered to public | A-7(1) |
| Publishing signs, ³ notices, etc. | A-2(1) |
| provision of public accommodation, services | A-3(1) |
| provision of commercial unit or housing | A-4(1) |
| property conveyance | A-5 |
| pay males and females | | | | | | | | | | | |

EXCEPTIONS

- ¹Bona fide qualification for employment
- ²Operation of bona fide insurance, retirement, seniority plan
- ³Free expression of opinion
- ⁴Age of majority
- ⁵Public decency
- ⁶Occupancy of housing restricted to one sex (except for owner and family)
- ⁷Preference for elderly
- ⁸Identification of facilities customarily used by one sex

NON-APPLICATION OF ACT

- Employment provisions not applicable to exclusively religious, philanthropic, educational, fraternal or social organization not operated for profit
- Employment provisions not applicable to domestic employee or to be employed in single family residence

| Practice | Race | Colour | Religion | National Origin | Ancestry | Place of Origin | 19 and Over | Marital Status | Sex | Physical Disability | Age |
|-----------------------------------------------------------------------|------|--------|----------|-------------------|----------|-----------------|-------------|----------------|------|---------------------|-------------------|
| Employment, terms and conditions of | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 2 | 3(1) | 3(1) | 3(1) ³ |
| Operation of employment agency ¹ | 3(2) | 3(2) | 3(2) | 3(2) | 3(2) | 3(2) | 3(2) | 2 | 3(2) | 3(2) | 3(2) ³ |
| Pre-employment ¹ inquiries, use of application forms | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 2 | 3(4) | 3(4) | 3(4) ³ |
| Membership, etc. ¹ in trade unions employers organizations | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 2 | 3(3) | 3(3) | 3(3) ³ |
| Provision of occupancy in commercial or dwelling | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 3 | 4(1) | 3 | 4(1) ³ |
| Conveyance of property | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) |
| Provision of public accommodation, services, facilities | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 3 | 5(1) | 3 | 5(1) ³ |
| Publishing signs, ⁴ notices, symbols, etc. | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 3 | 6(1) | 3 | 6(1) ³ |
| Membership in trade, professional, ⁶ business association | 7(1) | 7(1) | 7(1) | 7(1) ⁵ | 7(1) | 7(1) | 7(1) | 7(1) | 7(1) | 7(1) | 7(1) |

EXCEPTIONS

¹Bona fide occupational qualification²Operation of bona fide pension, retirement, insurance plan
³Bona fide qualification as determined by commission⁴Free expression of opinion⁵Application of statutory restrictions limiting membership to Canadian citizens or British subjects
⁶Statutory provision can lawfully limit membership to Canadian citizens or British subjects

Discrimination Prohibited

| Practice | Race | Religion | Religious Creed | Sex | Political Opinion | Colour | Ethnic, Nat. or Social Origin | Age 19-65 | Marital Status | Attachment Seizure, etc. of Pay |
|------------------------------------------------------------|-------|----------|-----------------|-------------------|-------------------|--------|-------------------------------|-----------|----------------|---------------------------------|
| Employment, terms ² and conditions of | 9(1) | 9(1) | 9(1) | 9(1) ¹ | 9(1) | 9(1) | 9(1) | 9(1) | 9(1) | 9A(1) ⁴ |
| Use of employment agencies | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9A(2) ⁴ |
| Trade union ² membership | 9(3) | 9(3) | 9(3) | 9(3) | 9(3) | 9(3) | 9(3) | 9(3) | 9(3) | 9A(3) ⁴ |
| Advertisement, application forms, enquiries re: employment | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) ⁴ |
| Pay of females and males | | | | 10(1) | | | | | | |
| Provision of public accommodation, services, facilities | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | |
| Provision of commercial or dwelling units | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | |
| Publishing of signs, ³ symbols, emblems, etc. | 11(1) | 11(1) | 11(1) | 11(1) | 11(1) | 11(1) | 11(1) | 11(1) | 11(1) | |

EXCEPTIONS

¹Bona fide occupational qualification²Operation of bona fide pension, retirement, employee insurance plan³Free expression of opinion⁴Where duties include collecting receiving, or depositing of money belonging to employer

NON-APPLICATION OF ACT

-Employment practices section does not apply to:

- a) Certain non profit organizations (religious fraternal)
- b) Domestic employed and living in private home

Discrimination Prohibited

| Practice | Race | Religion | Creed | Colour | Ethnic or Nat. Origin | Sex | Age (40-65) | Physical Handicap |
|--------------------------------------------------------------------------------------------------------------------------------|---------|----------|---------|---------|--------------------------|---------|--------------------|----------------------|
| Employment terms and conditions of Classification, referral, etc. by employment | A-8(1) | A-8(1) | A-8(1) | A-8(1) | A-8(1) | A-8(1) | A-11B ¹ | A-11B ² |
| Use of application forms, advertisements, pre-employment enquiries | A-8(2) | A-8(2) | A-8(2) | A-8(2) | A-8(2) | A-8(2) | A-11A(2) | A-11B ¹ |
| Pay of females | A-8(3) | A-8(3) | A-8(3) | A-8(3) | A-8(3) | A-8(3) | A-11B ¹ | A-11B ² |
| Trade union membership | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 | A-11A(2) | A-11B ¹ |
| Professional, trade, business association | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 | A-11A(2) | A-11B ¹ |
| Admission of applicants for volunteer services | A-11(1) | A-11(1) | A-11(1) | A-11(1) | A-11(1) | A-11(1) | A-11A(2) | A-11B ¹ |
| *Publishing signs, ³ notices, symbols, etc. | | | | | | | B-55(1) | |
| Associating with individuals class of individuals | A-12A | A-12A | A-12A | A-12A | A-12A | A-12A | A-11A | |
| Provision of public services, facilities, accommodation | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | |
| Property conveyance | A-6 | A-6 | A-6 | A-6 | A-6 | A-6 | A-6 | |
| Provision of housing ⁴ or commercial unit occupancy | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | |
| EXCEPTIONS | | | | | | | | |
| 1 Operation of bona fide pension, retirement, insurance plan | | | | | | | | |
| 2 Bona fide qualification for employment, activity, association | | | | | | | | |
| 3 Free expression of opinion | | | | | | | | |
| Where unit is single, non-advertised, non- listed room in dwelling the rest of which is occupied by landlord and family. | | | | | | | | |
| *Discrimination for any purpose prohibited (12(1)) | | | | | | | | |
| NON-APPLICATION OF ACT | | | | | | | | |
| - Employment practices section does not apply to 1 a) Domestic employed and living in a private | | | | | | | | |
| b) Certain non-profit groups (religious, ethnic) | | | | | | | | |
| - Volunteer services section does not apply to certain non-profit organizations (religious, ethnic) | | | | | | | | |

ONTARIO

A. ONTARIO HUMAN RIGHTS ACT
 B. EMPLOYMENT STANDARDS ACT

Discrimination Prohibited

| Practice | Race | Creed | Colour | Nationality | Ancestry | Place of Origin | Sex | Marital Status | Age (40-65) |
|-------------------------------------------------|---------|---------|---------|-------------|----------|-----------------|---------|----------------------|---------------------|
| Employment terms and conditions | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) ¹ |
| advertising re: employment | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) ¹ |
| Use of application forms | A-4(4) | A-4(4) | A-4(4) | A-4(4) | A-4(4) | A-4(4) | | | |
| Referral, etc. by employment agency | A-4(5) | A-4(5) | A-4(5) | A-4(5) | A-4(5) | A-4(5) | A-4(5) | A-4(5) | A-4(5) ¹ |
| Trade union membership | A-4a(1) | A-4a(1) | A-4A(1) | A-4a(1) | A-4a(1) | A-4a(1) | A-4a(1) | A-4a(1) | A-4a(1) |
| Professional association membership | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) |
| Display of emblems, ² symbols, signs | A-1(1) | A-1(1) | A-1(1) | A-1(1) | A-1(1) | A-1(1) | A-1(1) | A-1(1) | A-1(1) |
| Provision of public accommodation, services | A-2(1) | A-2(1) | A-2(1) | A-2(1) | A-2(1) | A-2(1) | A-2(1) | A-2(1) | A-2(1) ³ |
| Occupancy in housing commercial units | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) ⁴ | |
| Pay of males and females | | | | | | | | B-33(1) ⁵ | |

EXCEPTIONS

- ¹Where bona fide qualification for employment do not apply to
- ²Free expression of opinion not interfered with
- ³Public decency
- ⁴Where occupancy other than for owner and family is restricted to persons of some sex
- ⁵Where difference due to seniority, merit, quality, quantity systems

NON-APPLICATION OF ACT

- Limitation re: employment do not apply to
 - a) religious, philanthropic, educational, fraternal or social organization not operated for profit
 - b) Domestic employed in private home

| Practice | Race | Religion | Creed | Colour | Sex | Marital Status | Ethnic or National Origin | Political Belief | Age (18-65) | Physical Handicap |
|------------------------------------------------------------|-------|----------|-------|--------|-------|----------------|---------------------------|------------------|-------------|-------------------|
| Provision of Public Accommodation, Services, Facilities | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| Occupancy Commercial or Self- Contained Dwelling | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) |
| Property Sales | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Employment, Terms or Conditions of | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) ⁵ |
| Employment Agencies ² | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) ⁵ |
| Application Forms ² | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) ⁵ |
| Equal Pay ³ | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 |
| Membership in Employee Organization | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 ⁵ |
| Professional Business or Trade Association | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 ⁵ |
| Person, Agency Carrying Out Public function | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| Advertising ⁶ | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) |

EXCEPTIONS

¹ structure having 2 or more housing units; self-contained unit in structure having 2 or more self-contained units
² domestic employed and having in single family dwelling; exclusively religious, ethnic non-profit organizations
³ Seniority systems; production performance systems
⁴ religious, ethnic non-profit organizations
⁵ bona fide retirement, pension, group insurance plan
⁶ free expression of opinion

NON-APPLICATION OF ACT

- identification of facilities used by one sex
- display, publication by political, religious, national, non-profit organization
- philanthropic, fraternal, service groups in sex of membership qualifications
- bona fide qualification limitations
- trusts, deed, agreements made before act comes into force.

Discrimination Prohibited

| Practice | Race | Colour | Sex | Civil Status | Religion | Political Condition | Language | Ethnic or National Origin | Social Condition |
|----------------------------------------------------------------------------------|------|--------|-----|--------------|----------|---------------------|----------|---------------------------|------------------|
| Publishing of sign, symbol, etc. | 11 | 11 | 11 | 11 | 11 | 11 | 11 | 11 | 11 |
| Judicial Act re: ¹ goods, services offered to public | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 |
| Discriminatory clauses in judicial Act | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 |
| Access to Public Transport, Public Place (Hotel Restaurant, Theatre, etc.) | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 |
| Employment terms ² and conditions of | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 |
| Membership Association of Employees, Employers, Professional, Occupational Group | 17 | 17 | 17 | 17 | 17 | 17 | 17 | 17 | 17 |
| Employment Agencies | 18 | 18 | 18 | 18 | 18 | 18 | 18 | 18 | 18 |
| Equal Pay ³ | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 |

EXCEPTIONS

¹ Lease of one room in dwelling where lessor and his family reside, and room not advertised to public.

² Charitable, religious, political, educational non-profit organizations.

³ Seniority, experience, productivity, overtime systems.

NON-APPLICATION OF ACT

provisions against discriminatory publications, discriminatory clauses in judicial acts, discrimination in employment or by occupational associations and in equal pay do not apply to pension, life insurance or other benefit plans unless the discrimination is founded on race, colour, religion, political convictions, language, ethnic or national origin or social conditions

- A. SASKATCHEWAN BILL OF RIGHTS ACT
- B. FAIR EMPLOYMENT PRACTICES ACT
- C. FAIR ACCOMMODATION PRACTICES ACT
- D. LABOUR STANDARDS ACT

Discrimination Prohibited

| Practice | Race | Religion | Religious Creed | Colour | Sex | Nationality | Ancestry | Place of Origin |
|--------------------------------------------------------------------------------------|-------------------|----------|-------------------|---------|-------------------|-------------|----------|-----------------|
| Employment, terms and conditions of | B-3 | B-3 | B-3 | B-3 | B-3 | B-3 | B-3 | B-3 |
| Use of employment agencies that discriminate | B-4 | B-4 | B-4 | B-4 | B-4 | B-4 | B-4 | B-4 |
| Membership in trade unions | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 |
| Use of employment ¹ applications, advertisements pre-employment enquiries | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 |
| Carrying on any business, enterprise, occupation | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 |
| Ownership, occupancy of land | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 |
| Membership in professional, trade association | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 |
| Enrollment in educational institution | A-11 | A-11 | A-11 ² | A-11 | A-11 ² | A-11 | A-11 | A-11 |
| Publication, display ³ of signs, symbols, emblems | A-12(1) C-4(1) | A-12(1) | A-12(1) | A-12(1) | A-12(1) | A-12(1) | A-12(1) | A-12(1) |
| Provision of public accommodation, facilities, services | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 |
| Equal pay (males and females) | | | | | D-41 | | | |

EXCEPTIONS

¹Bona fide occupational qualification

School that:

- a) is run by religious order or society
- b) enrolls a particular sex, creed, religion exclusively

³Free expression of opinion

NON-APPLICATION OF ACTS

- Fair employment practices act not applicable to employer who is non-profit charitable, philanthropic, fraternal, religious, social organization or an organization (non-profit) operated for welfare of religious or racial group

NORTHWEST TERRITORIES

FAIR PRACTICES ORDINANCE

Discrimination Prohibited

| Practice | Race | Creed | Colour | Sex | Marital Status | Nationality | Ancestry | Place of Origin | Place of Residence |
|----------------------------------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|
| Employment, terms and conditions of pre-employment enquiries | 3(1) ¹ | 3(2) |
| Trade union membership | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) |
| Provision of public accommodation, facilities, services | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) |
| Provision of self-contained dwelling units, terms of occupancy | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) |
| Publication of ² signs, notices, emblems, etc. | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) |
| Pay of females | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) |

EXCEPTIONS

¹Bona fide occupational qualification
²Free expression opinion

NON-APPLICATION OF ORDINANCE

- Employment discrimination provisions do not apply to:

- a) Domestic in private home
- b) Non-profit charitable, philanthropic, educational, fraternal, religious, social organizations or organizations operated primarily to foster welfare of a religious or racial group
- c) School or board of trustees re: hiring where religious instruction included in curriculum

YUKON TERRITORY

A. FAIR PRACTICES ORDINANCE
 B. LABOUR STANDARDS ORDINANCE

Discrimination Prohibited

| Practice | Race | Religion | Religious Creed | Colour | Ancestry | Sex | Marital Status | Ethnic or Nat. Origin |
|-------------------------------------------------------------------------------------------------|--------|----------|-----------------|--------|----------|--------|----------------|-----------------------|
| Employment, ¹ terms and conditions of use of application ¹ forms | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) |
| Trade union membership | A-3(2) | A-3(2) | A-3(2) | A-3(2) | A-3(2) | A-3(2) | A-3(2) | A-3(2) |
| Provision of public accommodation, services, facilities | A-3(3) | A-3(3) | A-3(3) | A-3(3) | A-3(3) | A-3(3) | A-3(3) | A-3(3) |
| Provision of occupancy in self-contained dwelling units | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) |
| Publication in newspapers or display on property one controls, of signs, symbols, emblems, etc. | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) |
| Pay of females | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) |
| Pay of males | | | | | | | B-12.1(1) | |

EXCEPTIONS

¹Bona fide qualification for employment

²Accommodation, services, facilities restricted to persons of same sex

NON-APPLICATION OF ACTS

- Employment practices section of fair practices ordinance not applicable to:
 - a) Domestic service in private home
 - b) Non-profit charitable, philanthropic, educational, fraternal, religious, social organization or organizations for welfare of a religious or racial group
 - c) School board or trustees, where religious instruction in curriculum
- Occupancy provisions do not apply to apartment buildings with less than seven self-contained units

CANADIAN BILL OF RIGHTS

An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms

8-9 Elizabeth II, c. 44 (Canada)

[Assented to 10th August 1960]

Preamble

The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada;

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PART I

BILL OF RIGHTS

Recognition and declaration of rights and freedoms

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and

DÉCLARATION CANADIENNE DES DROITS

Loi ayant pour objets la reconnaissance et la protection des droits de l'homme et des libertés fondamentales

8-9 Elizabeth II, c. 44 (Canada)

[Sanctionnée le 10 août 1960]

Préambule

Le Parlement du Canada proclame que la nation canadienne repose sur des principes qui reconnaissent la suprématie de Dieu, la dignité et la valeur de la personne humaine ainsi que le rôle de la famille dans une société d'hommes libres et d'institutions libres;

Il proclame en outre que les hommes et les institutions ne demeurent libres que dans la mesure où la liberté s'inspire du respect des valeurs morales et spirituelles et du règne du droit;

Et afin d'expliquer ces principes ainsi que les droits de l'homme et les libertés fondamentales qui en découlent, dans une Déclaration de droits qui respecte la compétence législative du Parlement du Canada et qui assure à sa population la protection de ces droits et de ces libertés,

En conséquence, Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète :

PARTIE I

DÉCLARATION DES DROITS

Reconnaissance et déclaration des droits et libertés

1. Il est par les présentes reconnu et déclaré que les droits de l'homme et les libertés fondamentales ci-après énoncés ont existé et continueront à exister pour tout individu au Canada quels que soient sa race, son origine

fundamental freedoms, namely

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association; and
- (f) freedom of the press.

Construction of
law

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

- (a) authorize or effect the arbitrary detention, imprisonment or exile of any person;
- (b) impose or authorize the imposition of cruel and unusual treatment or punishment;
- (c) deprive a person who has been arrested or detained
 - (i) of the right to be informed promptly of the reason for his arrest or detention;
 - (ii) of the right to retain and instruct counsel without delay, or
 - (iii) of the remedy by way of *habeas corpus* for the determination of the validity of his detention and for his release if the detention is not lawful;
- (d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards;
- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or

nationale, sa couleur, sa religion ou son sexe :

- a) le droit de l'individu à la vie, à la liberté, à la sécurité de la personne ainsi qu'à la jouissance de ses biens, et le droit de ne s'en voir privé que par l'application régulière de la loi;
- b) le droit de l'individu à l'égalité devant la loi et à la protection de la loi;
- c) la liberté de religion;
- d) la liberté de parole;
- e) la liberté de réunion et d'association, et
- f) la liberté de la presse.

2. Toute loi du Canada, à moins qu'une loi du Parlement du Canada ne déclare expressément qu'elle s'appliquera nonobstant la *Déclaration canadienne des droits*, doit s'interpréter et s'appliquer de manière à ne pas supprimer, restreindre ou enfreindre l'un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s'interpréter ni s'appliquer comme

- a) autorisant ou prononçant la détention, l'emprisonnement ou l'exil arbitraires de qui que ce soit;
- b) infligeant des peines ou traitements cruels et inusités, ou comme en autorisant l'imposition;
- c) privant une personne arrêtée ou détenue
 - (i) du droit d'être promptement informée des motifs de son arrestation ou de sa détention,
 - (ii) du droit de retenir et constituer un avocat sans délai, ou
 - (iii) du recours par voie d'*habeas corpus* pour qu'il soit jugé de la validité de sa détention et que sa libération soit ordonnée si la détention n'est pas légale;
- d) autorisant une cour, un tribunal, une commission, un office, un conseil ou une autre autorité à contraindre une personne à témoigner si on lui refuse le secours d'un avocat, la protection contre son propre témoignage ou l'exercice de toute garantie d'ordre constitutionnel;
- e) privant une personne du droit à une audience impartiale de sa cause, selon les principes de justice fondamentale, pour la définition de ses droits et obligations;
- f) privant une personne accusée d'un acte

Interprétation
de la législation

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.

criminel du droit à la présomption d'innocence jusqu'à ce que la preuve de sa culpabilité ait été établie en conformité de la loi, après une audition impartiale et publique de sa cause par un tribunal indépendant et non préjugé, ou la privant sans juste cause du droit à un cautionnement raisonnable; ou

g) privant une personne du droit à l'assistance d'un interprète dans des procédures où elle est mise en cause ou est partie ou témoin, devant une cour, une commission, un office, un conseil ou autre tribunal, si elle ne comprend ou ne parle pas la langue dans laquelle se déroulent ces procédures.

Duties of
Minister of
Justice

3. The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the *Regulations Act* and every Bill introduced in or presented to the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

Short title

4. The provisions of this Part shall be known as the *Canadian Bill of Rights*.

Devoir du
ministre de la
Justice

3. Le ministre de la Justice doit, en conformité de règlements prescrits par le gouverneur en conseil, examiner toute proposition de règlement soumise, sous forme d'avant-projet, au greffier du Conseil privé, selon la *Loi sur les règlements*, comme tout projet ou proposition de loi soumis ou présenté à la Chambre des communes, en vue de constater si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la présente Partie, et il doit signaler toute semblable incompatibilité à la Chambre des communes dès qu'il en a l'occasion.

Savings

5. (1) Nothing in Part I shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of this Act.

"Law of
Canada"
defined

(2) The expression "law of Canada" in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada.

Clause de
sauvegarde

5. (1) Aucune disposition de la Partie I ne doit s'interpréter de manière à supprimer ou restreindre l'exercice d'un droit de l'homme ou d'une liberté fondamentale non énumérés dans ladite Partie et qui peuvent avoir existé au Canada lors de la mise en vigueur de la présente loi.

(2) L'expression «loi du Canada», à la Partie I, désigne une loi du Parlement du Canada, édictée avant ou après la mise en vigueur de la présente loi, ou toute ordonnance, règle ou règlement établi sous son régime, et toute loi exécutoire au Canada ou dans une partie du Canada lors de l'entrée en application de la présente loi, qui est susceptible d'abrogation, d'abolition ou de modification par le Parlement du Canada.

Définition «loi
du Canada»

(3) The provisions of Part I shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada.

(3) Les dispositions de la Partie I doivent s'interpréter comme ne visant que les matières qui sont de la compétence législative du Parlement du Canada.

VII - APPENDIX B

Acts

| | |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | Canada Labour Code, Part I (Fair Employment Practices) R.S.C., 1970, CL-1; and Part III (Standard Hours, Wages, Vacations and Holidays). |
| Alberta | <u>The Individual's Rights Protection Act</u> , S.A. 1972, c. 2; as amended 1973 c.61. |
| British Columbia | <u>Human Rights Code of British Columbia</u> , S.B.C., c. 119; as amended 1974, c. 87. |
| Manitoba | <u>The Human Rights Act</u> , C.C.S.M., c. H175, enacted by S.M. 1974, c. 65. |
| | <u>Employment Standards Act</u> , R.S.M. 1970 c. E110; as amended 1975 Bill 62, c. 42; 1976, c. 48. |
| New Brunswick | <u>Human Rights Code</u> , R.S.N.B. 1973, c. H-11, as amended 1976, c.31. |
| Newfoundland | <u>The Newfoundland Human Rights Code</u> , R.S.N. 1970, c. 262; as amended 1973, Act No. 34 and 1974, Bill 114. |
| Nova Scotia | <u>Human Rights Act</u> , S.N.S. 1969, c. 11; as amended 1970, c. 85; 1971, c. 69, 1972, c. 65; and 1974, c. 46. |
| | <u>Labour Standards Code</u> , S.N.S. 1972, c. 10; as amended 1974, c. 29. |
| Ontario | <u>The Ontario Human Rights Code</u> , R.S.O. 1970, c. 318; as amended 1971, c. 50, s. 63; 1972, c. 119; and 1974, c. 73. |
| | <u>The Employment Standards Act, 1974</u> , S.O. 1974, c. 112. |
| Prince Edward Island | <u>Human Rights Code</u> , S.P.E.I. 1975, c. 72. |
| Québec | <u>Charter of Human Rights and Freedoms</u> , Bill 50, 1975, as amended 1976, Bill 56. |

Saskatchewan

The Saskatchewan Human Rights Commission Act, S.S. 1972, c. 108; as amended 1973, c. 94.

The Fair Employment Practices Act, R.S.S. 1965, c. 293; as amended 1972, c. 43.

The Fair Accommodation Practices Act, R.S.S. 1965, c. 379; as amended, S.S. 1972, c. 42.

The Saskatchewan Bill of Rights Act, R.S.S. 1965, c. 378; as amended, S.S. 1972, c. 104.

The Labour Standards Act, S.S. 1969, c. 24; as amended 1971, c. 19; 1971 c. 4; 1972, c. 59; 1973, c. 51; 1973-74, c. 53; 1974-75 Bill 32.

Northwest Territories

Fair Practices Ordinance, O.N.W.T. 1966, c. 5; as amended 1974, c. 4.

Yukon Territory

Fair Practices Ordinance, R.O.Y.T. 1971, c. F-2; as amended 1974, c. 7.

Labour Standards Ordinance, R.O.Y.T. 1971, c. L-1; as amended 1973, c. 13; and 1974 c. 9.



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1978

HUMAN RIGHTS IN CANADA

LEGISLATION



Labour
Canada

Travail
Canada

HUMAN RIGHTS IN CANADA 1978

Legislative Analysis

LABOUR CANADA

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Foreword

During 1977 a major step forward was made in the protection of the rights of Canadian citizens with the passage of the Canadian Human Rights Act.

All jurisdictions in Canada now have a human rights code.

Several provinces also extended the provisions of their human rights codes to give them wider coverage. Summaries of these developments follow, along with descriptions of some cases which have been adjudicated in various jurisdictions.

The cost of this issue of Human Rights in Canada, the last to be published by Labour Canada, was shared by the Canadian Human Rights Commission and Labour Canada.

The present publication was authored by Cal McKerral.

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CONTENTS

| | Page |
|-----------------------------------------------------------------------------------|------|
| I Federal and Provincial Jurisdiction Over Human Rights | 1 |
| II The Canadian Bill of Rights | 2 |
| III Legislative Developments During 1977 | 4 |
| IV Analysis of Legislation | 15 |
| 1. General | 15 |
| (a) Publications, Signs, Display of Various Representations | 15 |
| (b) Public Accommodations, Services, Facilities | 17 |
| (c) Association with Minority Groups | 18 |
| (d) Contracts | 19 |
| 2. Employment and Employment-Related Subjects | 19 |
| (a) Employers | 19 |
| (b) Employment Agencies | 22 |
| (c) Application Forms, Advertisements and Inquiries in Connection with Employment | 22 |
| (d) Trade Unions | 26 |
| (e) Employers' Associations | 27 |
| (f) Professional, Business and Trade Associations | 27 |
| (g) Equal Pay | 28 |
| 3. Occupancy, Property Sales | 34 |
| (a) Occupancy | 34 |
| (b) Conveyance of Property | 36 |
| 4. Where the Acts do not Apply | 36 |
| 5. Special Programs | 37 |
| 6. Protection of Complainants | 38 |
| 7. Administration of Acts | 40 |
| 8. Human Rights Commissions | 40 |
| 9. Enforcement - Initiation | 41 |

| | Page |
|-----------------------------------------------|------|
| 10. Enforcement - Inquiries | 42 |
| 11. Enforcement - Orders | 43 |
| V Tables | 46 |
| VI Enforcement Procedure - Charts | 60 |
| VII Cases | 74 |
| VIII Appendix A - The Canadian Bill of Rights | 88 |
| IX Appendix B - Acts | 92 |

I - FEDERAL AND PROVINCIAL JURISDICTION OVER HUMAN RIGHTS

Sections 91 and 92 of the British North America Act, which provide for the division of legislative powers between the Parliament of Canada and the provincial Legislatures, make no express mention of the words "human rights" or "civil liberties".

The question therefore arises as to which of the two levels of government - the federal Government or the provincial Governments - has jurisdiction over human rights.

In order to determine who has jurisdiction over human rights, it is, first, necessary to classify them so as to make possible the distribution of legislative power between the federal and provincial Governments according to the different types of human rights.

Human rights can be classified as follows: "political rights" - traditionally including freedom of association, assembly, speech, press and religion; "economic rights" - the right to own property, and the right not to be deprived thereof without compensation, freedom of contract, the right to withhold one's labour, etc.; "legal rights" - freedom from arbitrary arrest, right to a fair hearing, right to counsel, etc.; "egalitarian rights" - right to employment, accommodation, education, and so on, without discrimination by reason of race, colour, sex, creed, etc.

It is generally recognized that political rights, in the sense of "public rights", are essentially within the competence of the Parliament of Canada. A distinction must be made, however, between the "restriction" and "protection" of such rights. The federal Parliament appears to have the sole authority to restrict political rights on the basis of its jurisdiction over criminal law (Saumur v. The City of Québec (1953), 2 S.C.R. 299; Henry Birks & Sons v. The City of Montreal (1955), S.C.R. 799; Switzman v. Elbling (1957), S.C.R. 285). The provincial Legislatures are competent, however, to protect political rights, by virtue of their jurisdiction over civil rights within the province (Oil, Chemical Workers International Union v. Imperial Oil Ltd. (1963), S.C.R. 584). But it is equally of the competence of the federal Parliament to deal with the protection of political rights by legislating in relation to matters falling within its jurisdiction (i.e., the 1960 Canadian Bill of Rights).

As regards the economic, legal and egalitarian rights, they are subject to either federal or provincial jurisdiction, or to both concurrently, depending on whether the activities with which those rights are connected are themselves within the legislative competence of the federal Parliament or of the provincial Legislatures.

II - THE CANADIAN BILL OF RIGHTS

The Canadian Bill of Rights became law on August 10, 1960. Unlike the American Bill of Rights, it is not included in nor does it form part of the Constitution (i.e., the British North America Act). Furthermore, the Canadian Bill of Rights applies only to federal legislation; it has no effect on provincial laws. Under it, any federal law infringing one of the declared rights and freedoms shall be declared inoperative. This sanction, however, does not apply to those laws which expressly provide that they shall operate notwithstanding the Canadian Bill of Rights.

The Canadian Bill of Rights declares and recognizes that the following human rights and freedoms exist: freedom of religion, speech, assembly, association and the press; the right to equality before the law and the protection of the law; the right to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law. The above rights and freedoms exist without discrimination by reason of race, national origin, colour, religion or sex. The Bill of Rights also guarantees such rights as the right to counsel and a fair hearing, the presumption of innocence, protection against cruel punishment, the right to an interpreter and certain rights of an arrested person.

However, the Canadian Bill of Rights has not, in practice, had any substantive effect. In most cases where the Bill was invoked the courts held that it did not apply. Canadian appellate courts, in particular, have treated the Bill as, at the most, providing rules for construction of federal legislation. This has been so notwithstanding the retroactive character of the Bill of Rights in its declaration that no law of Canada may derogate from it unless so expressly declared, and notwithstanding also the direction to the courts to construe and apply federal legislation so as not to infringe the declared rights and freedoms.

On the whole, there have been strong judicial views expressed that the Parliament of Canada did not intend, by enacting the Bill of Rights, to alter its own previously enacted laws which may be in conflict with the Bill. The Courts have said instead that the Parliament of Canada would have included a proviso in the Bill itself that it was its will to render the Bill applicable to federal laws passed prior to the Bill's enactment.

The limited scope of application of the Canadian Bill of Rights, and its resulting ineffectiveness in protecting human rights, gave rise, a few years ago, to a suggestion by the federal Government that the fundamental rights of all Canadians would be more effectively guaranteed by a constitutionally entrenched Bill of Rights. Such an amendment to our Constitution would declare invalid any existing or future law inconsistent with the Bill. Suffice it to say that this proposal of the federal Government did not meet with the provincial Governments' approval, a condition precedent to any constitutional change.

That proposal, and others made in recent years, have one thing in common: all point to the need for protecting human rights more effectively than presently does the Canadian Bill of Rights. Major disagreements still exist, however, with regard to the best mutually acceptable method of providing such protection.

III - LEGISLATIVE DEVELOPMENTS DURING 1977

During 1977 six jurisdictions passed human rights legislation, the most significant of which was the Canadian Human Rights Act.

The Act comprises a preamble, five parts and an appendix. The preamble sets out the purpose of the act; i.e., to ensure that every person should have equal opportunity with others to make a life without being hindered by discriminatory practices, and to protect the privacy of individuals and their right of access to records containing personal information concerning them.

Part one outlines prohibited forms of discrimination. For all purposes of the Act, race, national or ethnic origin, colour, religion, age, sex, marital status, conviction for which a pardon has been granted, and, in matters related to employment, physical handicap, are prohibited grounds of discrimination. The practices in which the above grounds of discrimination are prohibited are as follows:

- to deny or to adversely differentiate in relation to any individual in the provision of goods, services, facilities or accommodation customarily available to the general public;
- to deny or to adversely differentiate in relation to any individual in the provision of commercial premises or residential accommodation;
- to refuse to employ or continue to employ an individual or, in the course of employment, to differentiate adversely in relation to an employee;
- to use or circulate any form of application for employment, or in connection with employment or prospective employment to publish any advertisement or to make any written or oral inquiry that expresses or implies any limitation, specification or preference;
- to exclude an individual from full membership or to expel or suspend a member of, an employee organization or to limit, segregate, classify etc. so that an employee would be deprived, limited in employment opportunities or otherwise adversely affected;
- (It is, however, not a discriminatory practice to exclude, suspend or expel an individual from membership in an employee organization when he or she has reached normal retirement age for individuals working in positions similar to the position of that individual).

- for an employer or employee organization to have policies, practices, programs or to enter an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment that deprives or tends to deprive an individual or class of individuals of any employment opportunities;
- to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value;
- to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that expresses or implies discrimination or an intention to discriminate or incites or is calculated to incite others to discriminate in the proscribed practices as outlined above.

Part Two of the Act establishes the Canadian Human Rights Commission, consisting of a Chief Commissioner, a Deputy Commissioner and between three and six other members, to be appointed by the Governor in Council.

The Chief and Deputy are full-time members of the Commission and the others may be full-time or part-time members.

Full-time members may be appointed for a term not exceeding seven years and part-time members for a term not exceeding three years. Reappointment is provided for.

Besides its duty with respect to complaints regarding discriminatory practices and administration of parts one, two and three of the Act, the Commission must foster public awareness of the Act, sponsor programs to promote the principles described in the preamble, maintain close liaison with relevant provincial bodies and authorities, carry out studies, review statutory instruments, promote improvement in access to goods, services, facilities and accommodation for handicapped persons, etc.

Succeeding sections outline such matters as assignment of duties, interdelegation of duties between the federal and provincial bodies and authorities, duties, powers, etc. of officers and staff, rules of disclosure, and other administrative matters.

Part Three deals with discriminatory practices and general provisions.

Any individual or group can, on reasonable grounds, file a complaint of alleged violations of the Act with the Commission. The Commission may refuse to deal with a third party complaint unless the alleged victim consents.

The Commission itself may also initiate complaints. It may also deal with multiple complaints together, whether they are jointly or separately filed, where it judges them to be substantially the same in fact or in law, and may appoint a single Human Rights Tribunal to deal with such complaints. The Act specifies that other appropriate avenues of redress should be sought before the Commission will deal with a complaint.

The Commission may designate an investigator to deal with a complaint. The investigator is authorized to investigate a complaint in accordance with regulations made under the Act. In general, however, the investigator may enter any premises other than a private dwelling place and carry out such inquiries as are reasonably necessary for the investigation of the complaint. Such entry must be made at a reasonable time and would be subject to rules in the interest of national security. Any individual found in the premises entered into may be required to produce relevant books, records, etc. for inspection or copy.

The investigator must, as soon as possible, submit a report of the findings of the investigation to the Commission. The Commission may adopt or reject the report.

The Commission may appoint a conciliator in order to bring about a settlement of the complaint.

A person is not eligible to act as a conciliator if that person has already acted as an investigator in respect of the same complaint.

Provision is made for a Human Rights Tribunal to conduct an inquiry into a complaint.

At any stage after the filing of a complaint and a hearing of a Tribunal, any settlement reached may be submitted to the Commission for approval or rejection.

A Human Rights Tribunal may consist of not more than three members, who are to be picked from a panel of prospective members.

No member, officer or employee of the Commission and no one who has acted as investigator in a complaint for which a Tribunal is appointed is eligible to be appointed to the Tribunal.

The Tribunal shall, after giving due notice to the Commission and all interested parties, hear evidence relevant to the complaint.

The Tribunal has the power to summon and enforce the attendance of witnesses and compel them to give evidence. It can also administer oaths and accept other evidence through affidavit or otherwise, as it sees fit.

A conciliator appointed to settle a complaint is not a competent or compellable witness at a Tribunal hearing into that complaint. Hearings must be public, except that a Tribunal may exclude members of the public during the whole or part of a hearing if it considers such exclusion to be in the public interest.

The Tribunal can dismiss a complaint if it has not been substantiated, or it can, where the complaint has been substantiated, make an order against the offender.

Orders can include ceasing a discriminatory practice, measures to prevent future discrimination making available appropriate rights, opportunities or privileges, compensation for lost wages and expenses, as well as for additional costs of alternative goods, services, facilities or accommodation that the victim incurred as a result of the discriminatory practice.

Also, special compensation of up to five thousand dollars can be awarded for the victim's having suffered in respect to feelings or self-respect.

Separate orders can also be made where a discrimination based on physical handicap impeded access to premises or facilities.

Telephone hate messages are prohibited by the Act. In a case where such a practice is substantiated, the Tribunal may order the practices cease and order the adoption of special measures or programs to prevent future instances of the practice.

Where a Tribunal consisted of fewer than three members, appeal from the Tribunal's decision can be made to a Review Tribunal by the complainant, the person against whom the complaint was made, or the Commission within thirty days after the Tribunal's decision or order was pronounced.

A Review Tribunal must consist of three members, to be selected from the panel of candidates. None of the members of the Review Tribunal can be one of the members of the original Tribunal. Appeal to the Review Tribunal lies from a Tribunal decision or order on any question of law or fact or mixed law and fact.

The Review Tribunal may either dismiss the appeal or allow it, rendering an appropriate order.

Any order of a Tribunal or Review Tribunal may be made an order of the Federal Court of Canada and is enforceable in the same manner as an order of that Court.

The Act protects any complainant or participant in the initiation of a complaint or prosecution from intimidation or discrimination.

Fines of up to fifty thousand dollars for an employer, employer association or employee association and up to five thousand dollars in any other case are provided for contravention of provisions of the Act.

Prosecutions may be brought against an employer or employee association with the consent of the Attorney General of Canada. No superannuation or pension fund or plan established by an Act of Parliament is affected by Parts One and Two of the Act before an allowing section comes into force.

The Act applies to members of the Canadian Forces and the Royal Canadian Mounted Police.

Part Four of the Act deals with protection of personal information. The provisions apply to all federal information banks (i.e., collections or grouping of personal information recorded in any form, that is within the control of a government institution and that has been collected from an individual or individuals or a corporation or institution).

Individuals are entitled to ascertain the uses to which information in government information banks is being put. Records may be examined by individuals and corrections and notations may be requested.

Consultation and consent are provided for where information is to be put to a non-derivative use (i.e., a use not originally intended).

Exemption from access to information is possible in particular cases where in the opinion of the appropriate Minister and with the approval of the Governor in Council an order should be given because of matters involving international relations, national defence or security, federal-provincial relations, an investigative body, crime detection or suppression, or investigations of offences against any Act of Parliament. Exemptions from access to certain types of information by an appropriate Minister are also provided for. These include the above, plus other matters related to the administration of justice.

An appropriate Minister in control of a federal information bank may order that certain records not be made available for inspection, amendment, notation, etc. But where the order has been in effect for two years, such records affected by the order must not be used for administrative purposes.

A designated Minister shall coordinate federal information banks to ensure compliance with Part Four and any regulations made under it. This duty includes elimination of unnecessary information banks.

A member of the Human Rights Commission is to be designated as Privacy Commissioner.

The Privacy Commissioner must receive and investigate complaints from persons who allege that they are not being afforded their rights under Part Four.

These investigations must be conducted in private. Any person or government institution which may be adversely affected by the Privacy Commissioner's findings must, however, be given an opportunity to answer.

The Privacy Commissioner has, for the purpose of investigating complaints, the powers of a Human Rights Tribunal.

Where a complaint is substantiated, the Privacy Commissioner must report to the appropriate Minister his findings and recommendations, and may request a report of plans to rectify the situation, or reasons why a situation has not been rectified.

The Privacy Commissioner must also report to the complainant. An annual report by the Privacy Commissioner must be made to Parliament. Studies must also be carried out by the Commissioner regarding the fulfillment of the provisions of Part Four.

Part Five of the Act contains general provisions. Among them are the declaration that the Act is binding on Her Majesty in right of Canada, and that nothing in the Act affects any provision of the Indian Act or any provision made under or pursuant to the Indian Act.

The Act repeals Part One of the Canada Labour Code, (Fair Employment Practices) and replaces section 38.1 (in Part three of the Canada Labour Code) which contains equal pay provisions.

The Act also amends the Unemployment Insurance Act, 1971, to proscribe discrimination (including political affiliation), but makes allowance for special programs designed to assist members of identifiable groups where disadvantages are or would be based on or related to race, national or ethnic origin, colour, religion, age, sex, marital status or physical handicap.

The appendix to the Act lists all government departments and institutions affected by Part Four of the Act.

On August 30, 1977, the Government of British Columbia passed Bill 63, The Ombudsman Act.

The Act establishes the office of Ombudsman for British Columbia.

Appointment is made by the Lieutenant-Governor on recommendation of the Legislature. This would follow upon unanimous recommendation by a special committee of the Legislative Assembly.

Appointment is for a term of six years, with the possibility of reappointment for further six-year terms.

Suspension or removal of the ombudsman for office can be effected by the Lieutenant-Governor on the recommendation of the legislative assembly.

Provision is made for the appointment of an acting ombudsman by the Lieutenant-Governor.

The ombudsman is empowered to investigate decisions or recommendations, acts done or omitted, or procedure used by governments (provincial and municipal) and agencies listed in the schedule attached to the Act.

Upon complaint or by his or her own initiative, the ombudsman has the power to investigate as (s)he saw appropriate, and to obtain pertinent information and conduct hearings.

No report which would adversely affect an authority or person can be made without the authority or person being given the opportunity to make representations.

The Act does not give the Ombudsman power to reverse or vary a decision of an authority, but only to recommend to the authority that it change its procedures to give more efficient or fair service to the public.

The ombudsman is obliged to report annually to the Legislature, and would be empowered to publicize his findings.

On June 17, 1977, Manitoba added "physical handicap" to the prohibited grounds for discrimination.

Advertising, provision of services, accommodation and facilities, purchase of property, contracts ordinarily made available to the public, and employment and employment-related areas are subject to the new provisions.

Québec passed Bill 88, An Act to Amend the Charter of Human Rights and Freedoms on December 15, 1977, to add "sexual orientation" to the list of grounds upon which discrimination is prohibited.

The Blind Person's Guide Dog Act was passed in Alberta.

The Act prohibits discrimination against blind persons accompanied by a guide dog, in the provision of, or conditions of provision of accommodation, services or facilities available to the public.

Specifically prohibited also is discrimination in the provision of, or terms or condition of occupancy, of any self-contained dwelling unit by reason only that a person is blind and customarily accompanied by a guide dog.

Provision is made for voluntary use of a special card to identify the person and his guide dog.

Fines of up to \$1,000 are provided for people who discriminate, and fines of up to \$100 are provided for people who purport to be a blind person for the purpose of claiming benefits of the Act.

In Nova Scotia the legislature passed several pieces of legislation pertaining to individuals' rights. One of these was an Act to Amend the Statute Law Respecting Women.

Statutes affected by the Act include:

- The Civil Service Act - the right to appointment to the civil service and to write civil service exams without regard to race, religion, creed, colour, ethnic or national origin, sex, marital status, age or physical handicap;
- The Human Rights Act - prohibition of discrimination on the grounds of marital status by employment agencies, employee's organizations, professional and business and trade associations and voluntary or public service organizations; prohibition of discrimination on the ground of marital status in employment, conditions of employment, and application forms and advertising for employment;
- Labour Standards Code - removal of the authority of the minimum wage board to determine minimum wages on the basis of sex of the employee;
- Consumer Protection Act - prohibition of a lender or seller from discriminating against a borrower or buyer solely because the borrower or buyer is a woman;
- Guardianship Act - the right of the courts to now appoint either the father or the mother to be the guardian of the estate of an infant;
- Education Act - redefinition of the term "parent" to eliminate the preferential position of the father over the mother;
- Police Act - deletion of the words "man" and "men" and substitution of the word "member" when referring to members of police forces.

Another bill which was passed in Nova Scotia was An Act to Amend Chapter 11 of the Acts of 1969, the Human Rights Act.

The requirement for a Minister to provide "terms of reference" to a board of inquiry is eliminated. Now, the Minister must provide a board with true copy of a complaint.

A list of parties to a proceeding before a board of inquiry is now provided in the Act (i.e., the Commission, the complainant, any person named in the complaint as having been dealt with contrary to the provisions of the Human Rights Act, any person named in the complaint

and alleged to have contravened the Act, any other person specified by the board upon such notice as the board may determine and after the person has been given an opportunity to be heard against joinder as a party).

Detailed procedure to be followed by a board of inquiry is included in the amendments. A board of inquiry has the power to order any party who has contravened the Act to comply with it, rectify any injury, or pay compensation. Under the former provisions a board of inquiry reported recommendations to the Human Rights Commission which in turn made recommendations to the Minister.

Confidentiality of information is provided to the Commission or its Director or employees. These persons are not required to provide Commission records or evidence to any board of inquiry or any court.

A right of appeal lies from a board of inquiry to the Appeal Division of the Supreme Court. This appeal is conducted on the basis of the record of proceedings before the board of inquiry.

The provision permitting the Minister to issue an order is repealed, since this is now done by a board of inquiry.

Another statute passed in Nova Scotia was An Act Respecting Access by the Public to Information on File with the Government.

The bill details the types of information which will be accessible to the public. These include organization of government departments, administrative and staff manuals, general policy and applicability of policy, rules of procedure, final decisions of administrative tribunals, personal information contained in files pertaining to the person making the request for information, departmental annual reports and regulations and programs and policies of a department.

Certain types of information will not be accessible to the public. These include information which might reveal personal information concerning another person, result in financial gain or loss to a person or department, influence negotiations in progress leading to an agreement or contract, jeopardize the ability of a department to function on a competitive basis, be injurious to relations with another government, be likely to disclose information obtained or prepared during the conduct of an investigation concerning alleged violations of any enactment or the administration of justice, be detrimental to the proper custody, control or supervision of persons under sentence, disclose legal opinions or advice provided to a department by a law officer of the Crown, or privileged communications between barrister and client in a matter of departmental business, disclose opinions or recommendations by public servants in matters for decision by a Minister or the Executive Council, or disclose draft legislation or regulations, disclose information the confidentiality of which is protected by an enactment.

A person may request that personal information pertaining to him or her be corrected and amended, or that information contained in the file may not be used for certain purposes without the person's consent. Injunctive relief may be sought to amend or correct personal information on a file maintained by a department.

Provision is made for guarding the confidentiality of personal information held by the government, and for the availability of information about one's self.

Rules are set out for the making available of information requested by the public. Requests must be responded to within 15 days.

Denials of information may be appealed to the Minister. There is a 15-day time limit for filing an appeal, and a 30-day limit for a ministerial response.

A Ministerial confirmation of denial may be further appealed to the Assembly through a member making a motion in the House. The House would then deal with the motion according to its Rules and Forms of Procedure.

Bill 146, An Act to Establish an Advisory Council on the Status of Women, was passed.

The Act establishes an Advisory Council on the Status of Women.

No particular number of members is specified.

Terms of office are:

- (a) for the President and at least one-half of the members
 - not more than three years
- (b) for remainder - not more than two years.

Appointment to the council are to be made by the Governor in Council on the recommendation of the Minister responsible for the Act.

The Council will advise the Minister upon such matters relating to the status of women as are referred to it for consideration by the Minister, and will bring to the attention of the Minister matters of interest and concern to women.

To achieve these ends, the Council may receive and hear petitions, undertake and recommend research, recommend and participate in programs, propose legislation, policies and practices, and publish reports, studies and recommendations. Provision is made for an Executive Director of the Council, to keep records, provide stenographic and other services, supervise research projects, etc.

The Council is obligated to make an annual report of its activities to the Minister.

Nova Scotia passed an Act Respecting Certain Rights of Blind Persons.

The Act makes it an offence for anyone to discriminate against a blind person accompanied by a guide dog, in the provision of accommodation, services or facilities available to the public, or in the provision of occupancy in any self-contained dwelling unit.

The Act also prohibits the carrying of a cane or walking stick the major part of which is white, in any public place, public thoroughfare or public conveyance, by anyone other than a blind person.

It is an offence for anyone to purport to be a blind person for the purpose of obtaining or attempting to obtain the benefit of the Act.

The Act repeals the White Cane Act.

1. General(a) Publications, Signs, Display of Various Representations

All jurisdictions in Canada have enacted prohibitions against publication or display of discriminatory signs, symbols, and other representations.

Further, the provisions include (except for Alberta and British Columbia) a prohibition against permitting others to do so. This would apply in a case where, for example, one person allowed another to place a discriminatory sign on land which the former owned or controlled.

The jurisdictions which prohibit these practices and the grounds upon which the discrimination is prohibited, are listed below.

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | race, national or ethnic origin, colour, religion, age, sex, marital status, pardoned conviction |
| Alberta | race, religious beliefs, colour, sex, age (45-65), ancestry, place of origin |
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin, political belief |
| Manitoba | race, nationality, religion, colour, sex, marital status, ethnic or national origin, age, source of income, family status, physical handicap |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex, physical disability |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | any purpose |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status |

| | |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| P.E.I. | race, religion, creed, colour, ethnic or national origin, sex, marital status, political belief |
| Québec | race, colour, sex, civil status, religion, political convictions, language, ethnic or national origins, social condition, sexual orientation |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

All of the jurisdictions listed above (except the Yukon) state directly or indirectly that the prohibition against discriminatory publications, signs, etc., is not meant to limit the free expression of opinion.

Alberta allows a sign, display, etc., to express any bona fide qualification for employment, and states also, as does Manitoba, that identification of facilities customarily used by one sex does not violate the provision.

Manitoba law states explicitly that the provisions do not apply to the display of a notice, sign, symbol, etc., displayed to identify facilities customarily used by one sex.

New Brunswick allows exceptions based on bona fide qualifications pertinent to sex or marital status, as determined by the Human Rights Commission.

Québec's guarantee of freedom of expression is contained in an early section of the general provisions of the Charter of Human Rights and Freedoms.

The Federal Act qualifies its provision by adding "if the discrimination expressed or implied, or incited or calculated to be incited would otherwise, if engaged in, be a discriminatory practice..." as described in the Act. Also, the prohibition against telephone hate messages (the word "telecommunication" is also used) does not apply in respect of any matter communicated by means of the facilities of a broadcasting undertaking.

(b) Public Accommodations, Services, Facilities

All jurisdictions except the federal have enacted prohibitions against discrimination in the areas of public accommodations, services, and other public facilities.

The jurisdictions which have enacted provisions in the areas mentioned, and the grounds upon which discrimination is prohibited are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | race, national or ethnic origin, colour, religion, age, sex, marital status, pardoned conviction |
| Alberta | race, religious beliefs, colour, sex, ancestry, place of origin |
| British Columbia | race, religion, colour, sex, ancestry, place of origin (The grounds listed are not intended by the Act to be limiting.) |
| Manitoba | race, nationality, religion, colour, sex, age, ethnic or national origin, marital status, physical handicap |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, sex |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status |
| P.E.I. | race, religion, creed, colour, ethnic or national origin, sex, marital status, political belief |
| Québec | race, colour, sex, civil status, religion, political convictions, language, ethnic or national origin, social condition, sexual orientation |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |

| | |
|-----------------------|---------------------------------------------------------------------------------------------------|
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

British Columbia, Manitoba, and Ontario allow exceptions to the prohibition of the provision of public accommodations, services, or other facilities on the grounds of sex, where public decency is at issue.

British Columbia also allows an exception on grounds of sex for purposes of determining insurance benefits or premiums.

Manitoba allows an exception for persons under the age of majority where this is permissible by law or regulation.

In the Yukon, discrimination on the grounds of sex is excepted where the accommodation, service, or facilities are customarily used by one sex.

In New Brunswick, discrimination on the grounds of sex and marital status is excepted where there is a bona fide qualification, as determined by the Commission.

(c) Association with Minority Groups

Two jurisdictions, i.e., Nova Scotia, and Prince Edward Island, provide a comprehensively worded prohibition against discrimination because of a person's association with minority groups. The Nova Scotia prohibition reads:

"No person shall discriminate against any individual or class of individuals in any manner prescribed by this Act because of the race, religion, creed, colour or ethnic or national origin of any person or persons with whom the individual or class of individuals associates."

The Prince Edward Island section is similar, but with the added grounds of sex, marital status and political belief.

Alberta prohibits discrimination in employment practices against any person because of the race, etc., of that person or of any other person.

New Brunswick prohibits discrimination because of race, etc., without referring to a particular person.

(d) Contracts

Manitoba prohibits discrimination in the making available, and in the terms and conditions of, contracts offered to the public generally.

The grounds upon which discrimination is forbidden are race, nationality, religion, colour, sex, age, marital status, physical handicap and ethnic or national origin. Distinctions on the basis of age, sex, physical handicap, family status or marital status can be made in the case of life insurance, accident and sickness insurance, and certain annuities where the distinctions are not discriminatory and the insurance or annuity could not be provided without the distinction being made.

Québec provides that no one may in a juridical act stipulate a clause involving discrimination (i.e., race, sex, colour, civil status, religion, political convictions, language, ethnic or national origins, social conditions, sexual orientation). Such a clause is considered to be without effect.

In British Columbia and Alberta, regulations may be made requiring that contracts with the Crown, municipalities, school boards, and hospital boards contain clauses which ensure no discrimination be allowed in accordance with the Human Rights Acts of those provinces.

2. Employment and Employment-Related Subjects

(a) Employers

All jurisdictions in Canada have enacted prohibitions against discrimination in employment practices. The wording of the prohibitions varies somewhat from one jurisdiction to another, but in essence all the Acts say that discrimination is prohibited in the actual engaging of a person for work, and also in the terms and conditions of that person's being employed. This includes such matters as promotion, transfer, etc.

The term "employer" in most cases includes those such as employers' organizations, employment agencies, and others, i.e., individuals, corporations or organizations which act on behalf of employers.

The jurisdictions and the various grounds upon which discrimination in employment is prohibited are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|---------------------------------------------------------------------------------------------------------------------|
| Federal | race, national or ethnic origin, colour, religion, age, sex, marital status, pardoned conviction, physical handicap |
| Alberta | race, religious beliefs, colour, sex, age (45-65), ancestry, place of origin, marital status |

| | |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin, political belief (The grounds enumerated here are not meant to be limiting.) |
| Manitoba | race, nationality, religion, colour, sex, age, marital status, ethnic or national origin, political beliefs, family status, physical handicap |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex, physical disability |
| Newfoundland | race, religion, religious creed, sex, marital status, political opinion, colour, ethnic, national or social origin, age (19-65), assignment, attachment or seizure of pay |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, age (40-65), physical handicap, sex, marital status |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status, age (40-65) |
| P.E.I. | race, religion, creed, colour, ethnic or national origin, sex, marital status, political belief, age (18-65), physical handicap |
| Québec | race, colour, sex, religion, civil status, political convictions, language, ethnic or national origin, social condition, sexual orientation |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin, place of residence |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

Alberta, New Brunswick, Newfoundland and the Yukon allow an exception to all the prohibited grounds enumerated where there is a bona fide qualification for employment. Alberta also allows an exception on grounds of age or marital status, where the operation of a bona fide insurance or pension plan is concerned.

British Columbia allows an exception on the grounds of sex where public decency is concerned, and on the basis of age (45-65) where the operation of a bona fide insurance, pension or seniority plan is involved. British Columbia also allows exceptions where a criminal or summary conviction relates to the employment and where any act respecting Canadian citizenship constitutes reasonable cause.

Manitoba allows exceptions where age, sex, physical handicap marital status or political beliefs constitute a bona fide qualification for employment, and where age must be considered in the operation of a bona fide insurance, retirement or seniority plan. The age of majority is also valid grounds for exception.

In New Brunswick, age and physical disability are grounds for exception where the operation of a bona fide pension, retirement or insurance plan is concerned and all grounds can be excepted for work, depending on the nature of the work, as determined by the Human Rights Commission.

Newfoundland allows an exception for the conditions of operation of bona fide retirement, pension, and group insurance plans.

Nova Scotia provides that age is a valid exception in the case of the operation of a bona fide pension, retirement or insurance plan, and that physical handicap may be taken into account where handicap relates to a bona fide qualification for employment.

Ontario allows that sex, marital status and age (40-65) may be taken into account where a bona fide qualification for employment is concerned.

Newfoundland allows an exception to the rule regarding attachment or seizure of pay where the employees' duties would include collecting or depositing money belonging to the employer.

Prince Edward Island allows exceptions for an exclusively religious or ethnic organization not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin as the case may be. Also, bona fide retirement, pension, or group insurance plans are not affected with respect to physical handicap or age.

Québec allows exceptions for charitable, philanthropic, political, religious or educational nature of a non-profit institution, or institutions devoted exclusively to the well-being of ethnic groups.

In the Northwest Territories, all enumerated grounds except "place of residence" may be taken into account as being a bona fide occupational qualification.

The federal act allows exceptions for bona fide occupational requirements, legal minimum or maximum ages specified for employment, normal retirement age for employees working in positions similar to an individual employee, terms and conditions of any pension fund or plan providing for compulsory vesting or locking in of contributions at a fixed or determinable age in accordance with the Pension Benefits Standards Act (sec. 10).

(b) Employment Agencies

The Acts of Newfoundland and Saskatchewan forbid an employer, in the having or recruitment of persons for employment, to use an employment agency that practices discrimination against persons seeking employment. All these provisions are similar.

In Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Québec, the employment agency is specifically forbidden to discriminate against any person seeking employment.

Prince Edward Island also forbids employment agencies from accepting discriminatory inquiries from any employer or prospective employee.

(c) Application Forms, Advertisements and Inquiries in Connection with Employment

All the Acts, with some differences in wording, prohibit any person from using or circulating an application form or from publishing an advertisement in connection with employment or prospective employment or from making any written or oral inquiry in connection with employment that expresses either directly or indirectly any limitation, specification or preference as to the grounds on which discrimination is prohibited under the various Acts.

Several of the Acts (Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Saskatchewan and Northwest Territories) add to the provision summarized above a specific prohibition against requiring an applicant to furnish information to answer questions or to give particulars covering race, etc.

The Alberta, Manitoba, New Brunswick and the Northwest Territories provisions contain, after the clause "that expresses...any limitation, specification or preference," a second clause, "or that requires an applicant to furnish any information concerning race...."

The comparable Nova Scotia clause is "that directly or indirectly expresses any limitation, specification, preference or invites information, as to race...." The Saskatchewan clause is "that contains a question or a request for particulars as to the race...."

The British Columbia Act adds, in regard to advertisements, after the word "publish" the words "or display, or cause or permit to be published or displayed".

The Saskatchewan Act prohibits the use of any application form, the publication of any advertisement and the making of any inquiry that:

expresses either directly or indirectly a limitation, specification or preference...or an intent to make or give such limitation, specification or preference.

Ontario has separate sections prohibiting discriminatory application forms and inquiries. These are as follows:

"No employer shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any words, symbol or other representation that indicate directly or indirectly that race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin is or may be a limitation, specification or preference for a position or employment.

"No person shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any advertisement for a position or employment for or on behalf of an employer:

- (a) that contains any words, symbols or other representation; or
- (b) that is under a classification or heading,

indicating directly or indirectly that race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin, is or may be a limitation, specification or preference for the position or employment.

"No person shall use or circulate any form of application for employment or make any written or oral inquiry that expresses either directly or indirectly any limitation, specification, or preference as to race, creed, colour, nationality, ancestry or place of origin of any person or that requires an applicant for employment to furnish any information concerning race, creed, colour, nationality, ancestry or place of origin."

The Ontario Code permits an exception to the above provisions where a limitation, specification or preference as to sex or marital status is based on a bona fide occupational qualification and requirement for the position.

The specific grounds upon which discriminatory application forms, pre-employment inquiries, advertisements, etc., are prohibited are as follow:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | race, national or ethnic origin, colour, religion, age, sex, marital status, pardoned conviction, physical handicap |
| Alberta | race, religious beliefs, colour, sex, age (45-65), ancestry, place of origin (sex, age and marital status may be asked for on an application form) |
| British Columbia | race, religion, colour, sex, marital status, age (45-65), ancestry, place of origin (sex, marital status and age may be asked for on an application form, but race, religion, colour, ancestry, place of origin, political beliefs must not be asked for) |
| Manitoba | race, nationality, religion, colour, sex, age, marital status, ethnic or national origin, political belief, family status, physical handicap |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex, physical disability |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic, national or social origin, age (19-65), assignment, attachment, seizure of pay, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, age (40-65), physical handicap, sex, marital status |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex, marital status, age (40-65) (sex, marital status and age may be asked for on an application form) |
| P.E.I. | race, religion, creed, colour, sex, marital status, ethnic or national origin, political belief, age (18-65), physical handicap |

| | |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| Québec | race, colour, sex, civil status, religion, political conviction, language, ethnic or national origin, social condition, sexual orientation |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

Many jurisdictions allow exceptions to the prohibited practices on various grounds.

In Alberta, an exception is allowed on all prohibited grounds relating to information requirements from a job applicant, where there is a bona fide qualification for employment.

Manitoba allows exceptions on the grounds of sex, age and marital status in both advertising, etc., regarding employment and pre-employment inquiries. Age may be excepted where the operation of a bona fide insurance, retirement or seniority plan are concerned, and where the age of majority is an issue.

New Brunswick allows exceptions to all prohibited grounds in both advertising, use of application forms, etc., and in pre-employment inquiries where a bona fide occupational qualification is concerned. Exceptions to all the provisions in this area respecting age and physical disability are allowed where the operation of a bona fide pension, retirement, or insurance plan are concerned.

Newfoundland allows exceptions to all the prohibited grounds where a bona fide occupational qualification exists, and where bona fide pension, retirement, or employee insurance plans are affected. Also, the same exception as above under "(a) Employers" applies re: attachment, seizure or assignment of wages.

In Nova Scotia, exceptions exist for age provisions where there is a bona fide pension, retirement, or insurance plan, and for physical handicap, where the handicap relates to the employment, activity or association.

For advertising respecting employment, Ontario allows exceptions to the grounds of sex, marital status and age (40-65) where there is a related bona fide qualification for employment.

Saskatchewan allows exceptions on all grounds where a bona fide occupational qualification is concerned.

In the Yukon, all grounds are excepted for a bona fide qualification for employment.

The Prince Edward Island provisions do not apply to a domestic employee and living in a single family home, nor to an exclusively religious or ethnic organization or an agency of such an organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, if religion, creed, colour, sex, marital status or ethnic or national origin is a reasonable occupational qualification.

(d) Trade Unions

All the Acts forbid discrimination by a trade union on any of the prohibited grounds. The wording of the New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Saskatchewan, the Yukon and the Northwest Territories Acts is similar. They forbid a trade union to exclude any person from full membership or expel or suspend or otherwise discriminate against any of its members or discriminate against any person in regard to his employment by an employer. The federal wording is slightly different but substantially the same as the above, with the specific addition that discriminatory policy, practice or agreements affecting recruitment, referral, hiring, promotion, training, apprenticeship or any other matter relating to employment or prospective employment are forbidden. This prohibition also applies to employers.

The British Columbia, Manitoba and Ontario Acts forbid a trade union to exclude from membership or expel or suspend any person or member or discriminate against any person or member.

Alberta prohibits a trade union to exclude any person from membership therein, or expel or suspend any member thereof, or discriminate against any person or member.

The Québec provision is as follows:

"No one may practice discrimination in respect of the admission, enjoyment of benefits, suspension or expulsion of a person to, of or from an association of employers or employees or any professional corporation or association of persons carrying on the same occupation."

New Brunswick permits discrimination by trade unions where the discrimination is based upon a bona fide occupational qualification. In British Columbia, New Brunswick and Newfoundland, the provisions prohibiting discrimination by trade unions do not apply to bona fide retirement or pension plans; minimum service requirements of such plans; or bona fide group or employee insurance plans. Finally, non-profit organizations are not covered by provisions prohibiting discrimination by unions in Manitoba, Newfoundland and Prince Edward Island.

Exceptions

Exceptions to the prohibitions against discrimination by trade unions exist in several provinces.

British Columbia allows an exception where a criminal or summary conviction relates to the membership in a trade union.

New Brunswick allows exceptions to all prohibited grounds where a bona fide occupational qualification is concerned, and also allows, as does Nova Scotia, an exception where the age of a person relates to the operation of a bona fide pension, retirement or insurance plan.

Newfoundland allows an exception on all grounds where the operation of a bona fide retirement, insurance, or pension plan is concerned.

The federal act allows an exception where an individual has reached the normal age of retirement for individuals working in positions similar to that individual.

(e) Employers' Associations

Alberta, British Columbia, Manitoba, New Brunswick, and Québec have enacted prohibitions against membership discrimination in employers' associations. These prohibitions as well as the exceptions allowed are identical to the rules governing the activities of trade unions, as outlined above.

(f) Professional, Business and Trade Associations

In addition to provisions respecting discriminatory practices by employers' organizations, other jurisdictions have the various prohibitions apply to other groups as well. These are as follows:

| | |
|------------------|------------------------------------------------------------------------------------|
| Alberta | occupational associations |
| British Columbia | occupational associations |
| Manitoba | occupational associations |
| New Brunswick | trade, professional and business associations |
| Nova Scotia | professional, trade and business associations |
| Saskatchewan | professional and trade associations |
| P.E.I. | professional, business or trade associations |
| Québec | professional corporation or association of persons carrying on the same profession |

The Nova Scotia and New Brunswick Acts make it unlawful for a professional association or a business or trade association to exclude any individual from full membership or expel or suspend or otherwise discriminate against any of its members.

A "professional association" is defined to include an organization of persons which by an enactment, agreement or custom, has power to admit, suspend, expel or direct persons in the practice of any occupation or calling.

A "business or trade association" is similarly an organization of persons with power to admit, suspend, expel or direct persons in relation to any business or trade.

In New Brunswick, the application of statutory provisions restricting membership to Canadian citizens or British subjects is not affected.

Alberta defines the term "occupational association" as "any organization other than a trade union or employers' organization in which membership is a prerequisite to carrying on any trade, occupation or profession".

The Ontario Code forbids self-governing professions to exclude from membership or expel or suspend any person or member or discriminate against any person or member because of any of the prohibited grounds.

(g) Equal Pay

All jurisdictions have enacted laws which require equal pay for equal work without discrimination on the grounds of sex.

In five jurisdictions equal pay provisions are contained in the labour code -- the Ontario Employment Standards Act, Part VI; the Saskatchewan Labour Standards Act, Part V; the Nova Scotia Labour Standards Code (sections 55-57); the Yukon Labour Standards Ordinance; and the Manitoba Employment Standards Act (Part IV). In seven other jurisdictions equal pay provisions form part of human rights legislation -- the Alberta Individual's Rights Protection Act, the British Columbia Human Rights Act, the Canadian Human Rights Act the Québec Charter of Human Rights and Freedoms, the Newfoundland, Prince Edward Island Human Rights Codes and the Northwest Territories Fair Practices Ordinance.

New Brunswick's equal pay law is not specific; it is deemed to be included in the general anti-discrimination provisions in the Human Rights Code. Also the equal pay laws in Prince Edward Island and Québec are not limited to protecting workers because of their sex.

The Québec Charter of Human Rights and Freedoms states that an employer must without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.

Prince Edward Island forbids all employers or persons acting on their behalf from discriminating between employees by paying one employee at a rate of pay less than the rate of pay paid to another employee employed by him for substantially the same work, the performance of which requires equal education, skill, experience, effort and responsibility and which is performed under similar working conditions, except where payment is made pursuant to a seniority system, merit system, or a system that measures earnings by quantity or production or performance. The seniority system and the quality or quantity systems cannot be discriminatory, however.

The Alberta Act forbids an employer to employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer (or vice versa) for similar or substantially similar work. The work is deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar or substantially similar. Reduction of an employee's rate of pay in order to comply with the legislation is prohibited.

Newfoundland forbids any employer or person acting on his behalf to establish or maintain differences in wages between male and female employees, employed in the same establishment who are performing, under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility, except where such payment is made pursuant to a seniority system or a merit system.

The federal, Ontario, Saskatchewan and Manitoba provisions also protect persons of either sex against discrimination in the payment of wage rates. These provinces, and also Nova Scotia, lay down criteria for determining whether the work performed is the same or similar.

In the federal jurisdiction an employer is forbidden to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value. The criteria applied to determine relative value are skill, effort and responsibility in performance and work conditions.

In Ontario and Saskatchewan, the employer is prohibited from paying a female employee at a lesser rate of pay than that paid to a male employee (or vice versa) for the same work (similar work in Saskatchewan) performed in the same establishment, the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions. Nova Scotia's provisions are identical to Ontario's except that they only apply to female employees.

In the federal, Alberta, Ontario and Saskatchewan jurisdictions the employer is forbidden to reduce the rate of pay of an employee in order to comply with the equal pay requirement. Further, in Ontario employee or employer organizations may not cause or attempt to cause an employer to pay wages that contravene the equal pay provisions of the Act.

In Manitoba an employer is forbidden to pay the employees of one sex wages on a scale different from that on which wages are paid to employees of the other sex in the same establishment, if the work required of, and done by, employees of each sex is the same or substantially the same. By way of clarification, the Act states that the work of male and female employees is to be deemed the same or substantially the same if the job, duties, responsibilities, or services that the employees are called upon to perform are the same or substantially the same in kind or quality and substantially equal in amount.

All the Acts, where applicable, make it clear that a difference in rates of pay based on a factor other than sex does not constitute failure to comply with their requirements. In Nova Scotia, however, the employer must establish that such a factor justifies a different rate of pay.

Ontario has a specific exception in addition to the general exception permitting a differential based on any factor other than sex. Differences in rates of pay based on: a seniority system; a merit system or a system that measures earnings by quantity or quality of production do not constitute discrimination within the terms of the Act.

In Québec, a difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.

In all provinces equal pay legislation is applicable to provincial government employees. Rates of pay of classified public servants are set by classification, according to the type of work performed, without any distinction based on sex.

The procedure laid down for the enforcement of equal pay provisions may be invoked upon complaint by the aggrieved person in New Brunswick, Newfoundland and Prince Edward Island. Québec allows a complaint from the aggrieved person or group of persons to the "Commission des droits de la personne".

In Alberta and Nova Scotia, investigation may be initiated upon complaint by the aggrieved person or upon the initiative of the director appointed under the Act. The provisions of the Saskatchewan Act require the director, where he receives a directive from the Minister or a request from the aggrieved person, to advise the Human Rights Commission of the complaint and to request the Commission to conduct a formal inquiry into the matter. Routine investigations can also be made; a complaint is not an absolute requirement. When the Department of Labour is unable to resolve a case of apparent discrimination, the case is then referred to the Human Rights Commission for a formal inquiry.

In Ontario and Nova Scotia enforcement does not depend solely on a formal complaint. The equal pay provisions are enforced through inspection by the field staff of the respective Departments of Labour.

A complaint is to be registered in Newfoundland, New Brunswick and Prince Edward Island with the Minister of Labour (of Manpower and Industrial Relations in Newfoundland); and in British Columbia, Manitoba and Saskatchewan with a designated officer of the Department of Labour (the director). In Alberta and the federal jurisdiction, complaints are made to the Human Rights Commission. The Alberta and British Columbia legislation imposes a six-month time limit for making a complaint.

In all jurisdictions, except Ontario, Nova Scotia and the federal industries, the legislation provides for an initial informal investigation into a complaint, usually by an officer of the Department of Labour. In Alberta and the federal jurisdiction, such an investigation is made by the Human Rights Commission.

The federal Commission can act both on its own initiative or as the result of a complaint. Procedure is similar to that followed in dealing with other forms of discrimination.

In Newfoundland and New Brunswick, if the person designated to make the inquiry is unable to settle the matter, a board or commission of one or more persons may be appointed. In Newfoundland the commission is called the Human Rights Commission. (In Newfoundland, the Minister may, in addition, appoint a commission when he deems it desirable to have an inquiry made into any matter within the purview of the Act.)

In Alberta, the Human Rights Commission will refer a complaint that is not settled under the initial investigation to a Board of Inquiry (appointed by the Minister) to investigate the matter. In British Columbia and Saskatchewan, the director may refer the matter to the Human Rights Commission, a permanent body established under the Act. In Alberta and British Columbia, the Commission may dismiss a complaint at any stage of proceedings if it is of the opinion that it is without merit.

In Prince Edward Island, if the Human Rights Commission cannot effect a settlement, it must make a report to the Minister who may appoint a board of inquiry (one or more persons). If the board does not effect a settlement, it makes recommendations to the Commission, which then reports to the Minister. The Minister may then make such orders as he deems fit.

In Québec, where a complaint has been made for the Commission, the Commission attempts to effect a settlement. If this attempt is unsuccessful, the Commission may then recommend the cessation of any act, payment of indemnity, etc., and seek an injunction if the recommendation is not complied with.

The recommendations of the board, commission, committee or referee, as the case may be, may be put into effect by an order of the Minister except under the Alberta, British Columbia, Saskatchewan, federal and Québec Acts. Under the Alberta Act, the recommendations of the board are made to the Commission. If the Commission is unable to effect a settlement on the course of action to be taken with the person against whom the finding was made, the Commission must deliver all

material pertaining to the complaint to the Attorney General who may apply to the Supreme Court for an order. The Human Rights Commission must issue an order and in Saskatchewan it may issue an order if it finds that there has been a contravention of the Act.

In Newfoundland, the order of the Minister may be appealed to the Supreme Court. Under the Alberta Act, a decision of the board of inquiry may be appealed to the Supreme Court. An appeal of a decision or order made by the Saskatchewan Human Rights Commission may be made to a judge of the Court of Queen's Bench. In British Columbia, an order of the Human Rights Commission may be enforced by filing it in the Supreme Court of the province.

In British Columbia a board of inquiry may direct the person whom it has found to be in contravention of the Act to cease or rectify the contravention. It may also include in its order a direction to pay the wages lost as a result of the contravention. In Saskatchewan, where the Human Rights Commission finds that a contravention of the Act has been made it may order compliance with the provisions including the payment of compensation to the aggrieved party for previous service that was the subject of the complaint. Every person who violates the provisions of the federal Act is guilty of an offence and is liable on summary conviction to a fine, imprisonment, or both. The employer may also be directed to pay arrears of wages to which the employee was entitled. In Alberta the judge may order compensation for the person discriminated against for all or any part of any wages or income lost or expenses incurred by reason of the discriminatory action.

In Ontario, the Director of Employment Standards (who, under the direction of the Minister of Labour, administers the Employment Standards Act) has authority to determine the amount of wages owing to an employee, where in his opinion an employer has contravened the equal pay provisions. The employer must be given a chance to be heard. For purposes of enforcement of the Act, this amount is to be deemed unpaid wages.

Where the director cannot determine the amount owing, the Minister may, on his recommendation, appoint a board of inquiry. The board is required to hear the parties and to recommend to the director the course of action that ought to be followed.

Under the wage collection procedure of the Employment Standards Act, the director is empowered to collect unpaid wages for an employee up to a maximum of \$2,000 and the employer is subject to a penalty of 10 per cent of the amount owing. An employer who has paid the wages and penalty as required has the right to apply to the Minister for a review, whereupon a person designated by the Minister is required to hold a hearing, giving the employer full opportunity to make submissions, and to decide the amount owing to the employee. If the employer is dissatisfied with the Minister's decision, he may appeal the decision to the Supreme Court on the grounds that it is erroneous in point of law or in excess of jurisdiction.

The legislation in Nova Scotia is similar to that in Ontario. Where the Director of Labour Standards finds that an employer has not paid equal wages, he may direct the employer to pay the amount due to the employee to the Labour Standards Tribunal. If he disputes the director, the employer may apply to the Tribunal for a determination of the amount. If the Tribunal finds the employer is indebted to the employee, it must order the employer immediately to pay over to the Tribunal the amount of pay found to be unpaid. The person to whom the order is directed must forthwith comply with the order.

Provision is made in all the Acts for prosecution in the courts as a last resort. Failure to comply with the Act or an order is made an offence punishable by a fine. In Newfoundland, Ontario and Saskatchewan, the convicting magistrate must order the payment of wages due, in addition to imposing a fine. Under the federal Act, an employer convicted of an offence under the Act may, in addition to any other penalty, be made liable for payment of wages found to be due.

A number of the laws provide that a person claiming to be aggrieved by an alleged contravention of the Act has a choice of initiating court proceedings or of making a complaint. Some Acts stipulate that the right of an employee to take any other proceeding for recovery of wages to which he is entitled is not barred by reason of any remedy provided for in the Act.

The Northwest Territories Fair Practices Ordinance, which is a Human Rights Code, provides for equal pay for equal work. The Ordinance forbids an employer to employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer for similar or substantially similar work. The work is deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar or substantially similar. Reduction of an employee's rate of pay in order to comply with the legislation is prohibited. A difference in rates based on a factor other than sex does not constitute discrimination.

Enforcement is initiated by complaint of the aggrieved person to the officer appointed by the Commissioner of the Northwest Territories to deal with such matters. The Commissioner may then appoint an officer to inquire into the complaint. If settlement is not reached through conciliation, the officer must recommend to the Commissioner the action that should be taken with respect to the complaint. The Commissioner may issue whatever order he thinks necessary to put the recommendations into effect. A person affected by the order may appeal it within 10 days to a judge of the Territorial Court, whose decision is final.

In the Yukon Territory, sections of the Labour Standards Ordinance prohibit an employer from paying a female employee at a lesser rate of pay than that paid to a male employee or vice versa for "the same work performed under similar working conditions" except where such payment is made pursuant to a seniority system; a merit system; a system measuring earnings by quality or quantity of production; or a

differential based on any factor other than sex. Reductions of an employee's pay in order to comply with this legislation is not permitted. Employers' and employees' organizations are prohibited from causing or attempting to cause an employer to pay his employees rates of pay that contravene the legislation. Where the employer has not paid the wages required, the Labour Standards Officer may determine the amount owing the employee and such amount shall be deemed to be unpaid wages. Where the officer is unable to effect a determination, the matter is referred to the Advisory Board for investigation. The board, upon review of the matter recommends what action should be taken.

3. Occupancy, Property Sales

(a) Occupancy

All jurisdictions have enacted anti-discrimination provisions in the areas of property rental and occupancy. The wording and extent of the provisions vary from one jurisdiction to another, with some common characteristics throughout.

The federal act prohibits discrimination in the provision of commercial premises or residential accommodation.

The Yukon and Northwest Territories limit occupancy provisions to cover only self-contained apartment dwelling units. The Yukon's provisions cover only apartment buildings with more than six dwelling units.

Alberta, Newfoundland and Nova Scotia extend coverage to occupancy (Alberta uses the term "tenancy") in commercial or self-contained dwelling units. Nova Scotia adds "or housing unit used to provide rental accommodation".

Québec's prohibitions are general in nature; they outlaw discrimination in any juridical act. This includes occupancy agreements.

Manitoba and Ontario refer to occupancy in any commercial or housing accommodation, while New Brunswick's provisions cover occupancy in any commercial or dwelling unit.

Prince Edward Island's provisions cover occupancy in any dwelling unit.

British Columbia and Saskatchewan have relatively wide coverage; British Columbia provides for tenancy in any space... available, while Saskatchewan's provisions cover any interest in lands or occupancy thereof.

The grounds upon which discrimination in the provision of occupancy is prohibited in the various jurisdictions are as follows:

| <u>Jurisdiction</u> | <u>Prohibited grounds</u> |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Federal | race, national or ethnic origin, colour, religion, age, sex, marital status, pardoned conviction |
| Alberta | race, religious beliefs, colour, sex, ancestry, place of origin |
| British Columbia | race, religion, colour, sex, marital status, ancestry, place of origin |
| Manitoba | race, nationality, religion, colour, sex, age, ethnic or national origin, source of income, marital status, family status, physical handicap |
| New Brunswick | race, colour, religion, national origin, ancestry, place of origin, age (19 and over), marital status, sex, physical disability |
| Newfoundland | race, religion, religious creed, political opinion, colour, ethnic national or social origin, sex, marital status |
| Nova Scotia | race, religion, creed, colour, ethnic or national origin, sex |
| Ontario | race, creed, colour, nationality, ancestry, place of origin, sex |
| P.E.I. | race, religion, creed, colour, sex, ethnic or national origin, marital status, political belief |
| Québec | race, colour, sex, civil status, religion, political convictions, language, ethnic or national origin, social condition, sexual orientation |
| Saskatchewan | race, religion, religious creed, colour, sex, nationality, ancestry, place of origin |
| Northwest Territories | race, creed, colour, sex, marital status, nationality, ancestry, place of origin |
| Yukon | race, religion, religious creed, colour, ancestry, sex, marital status, ethnic or national origin |

Exceptions

In Manitoba, an exception is allowed on the grounds of sex where the occupancy of the housing (except for the owner and his family) is restricted to one sex. Also, a preference for elderly persons is allowed.

New Brunswick allows exceptions on the grounds of sex or marital status where a bona fide qualification (as determined by the Human Rights Commission) exists.

Nova Scotia allows exceptions on all prohibited grounds where the dwelling unit is a single, non-advertised, non-listed room in a dwelling the rest of which is occupied by the landlord and the landlord's family.

Ontario allows a similar exception to that allowed by Manitoba.

In Prince Edward Island the sex discrimination prohibitions in occupancy do not apply to a housing unit where the unit is in a structure having two or more units; or to a self-contained dwelling unit, where such unit is in a structure having two or more self-contained units.

The Québec prohibitions do not apply to a person who leases a room in a dwelling if the lessor or his family resides in such dwelling, leases only one room, and does not advertise the room by public notice.

In the Yukon, an exception is allowed where the dwelling unit is in a building limited to persons of one sex.

(b) Conveyance of Property

In British Columbia, Manitoba, New Brunswick, Nova Scotia, Québec and Saskatchewan, prohibitions against discrimination in the conveyance of property have been enacted.

In all the above jurisdictions the grounds upon which discrimination is prohibited coincide with the prohibited grounds respecting occupancy, except that in the case of Manitoba, family status is not included as grounds upon which discrimination is prohibited in the conveyance of property.

4. Where the Acts do not Apply

The Acts of the Northwest and Yukon Territories do not apply to the Crown. Those of all other jurisdictions do.

With some variation in wording, most Canadian jurisdictions exclude non-profit charitable, philanthropic, fraternal, religious and social organizations from their employment practices provisions.

Newfoundland limits this lack of application to non-profit religious and fraternal organizations. In Alberta such organizations are exempted only from the provisions relating to the publishing or display of signs, notices, emblems, etc.

Nova Scotia also excludes these groups from the volunteer services provisions of its Human Rights Act.

British Columbia excludes the above-mentioned organizations from all the provisions of its Human Rights Code where they give preference to members of the identifiable group or class.

New Brunswick allows no exclusion for such organizations or corporations.

Alberta, Manitoba, Nova Scotia, Newfoundland, Ontario, Prince Edward Island, the Northwest Territories and Yukon state that employment provisions do not apply to domestic servants employed in a private home. In Nova Scotia, Newfoundland and Prince Edward Island, the stipulation "and living in" a private home is added.

In Alberta, employment practices provisions do not apply to a farm employee who resides in the home of the farmer who employs him.

The Canadian Human Rights Act (i.e., the federal Code) does not affect any provision of the Indian Act or any provision made under or pursuant to that Act.

5. Special Programs

In Manitoba, Nova Scotia, New Brunswick, Ontario, British Columbia and the Northwest Territories the Human Rights Commission (the Commissioner in the Northwest Territories) may approve special programs designed to promote the welfare of minority groups.

In Nova Scotia, the Commission may approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals, and any approved programs shall be deemed not to be a violation of the prohibitions of the Act.

Québec's Commission must establish a program of education and information designed to promote an understanding and acceptance of the objects and provisions of the Charter of Human Rights and Freedoms.

In New Brunswick, on the application of any person, or on its own initiative, the Commission may approve a program to be undertaken by any person designed to promote the welfare of any class or persons. At any time before or after approving a program, the Commission may make inquiries concerning the program, vary the program, impose conditions on the program, or withdraw approval of the program as the committee thinks fit. Anything done in accordance with a program approved pursuant to this section shall not be a violation of the provisions of this Act.

In Ontario, the Commission may, "upon such conditions or limitations and subject to revocation or suspension, approve in writing any special plan or program by the Crown, any agency therefore, any person to increase the employment of members of a group or class of persons because of the race, creed, colour, age, sex, marital status, nationality or place of origin or the members of the group or class of persons".

In British Columbia under the Human Rights Code the Commission may approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals and any approved program shall be deemed not to be in contravention of any of the provisions of the Act.

In the Northwest Territories, the Commissioner may "approve programs designed to promote the welfare of any class of individuals, and any such program shall be deemed not to be a violation of the provisions of this Ordinance".

In Manitoba, the Commission may approve any special plan by the Crown, any Crown agency, or any person to increase the employment of members of a group or class of persons on the basis of the race, nationality, religion, colour, sex, age, marital status, ethnic or national origin of the members of the group or class of persons.

The federal Act allows special programs to prevent, reduce or eliminate discrimination where disadvantages are or would be suffered by a group of individuals because of race, national or ethnic origin, colour, religion, age, sex, marital status or physical handicap by improving opportunities respecting goods, services, facilities, accommodation or employment.

6. Protection of Complainants

All jurisdictions contain provisions forbidding reprisals against complainants.

Saskatchewan provides that;

No employer or trade union shall discharge, expel or otherwise discriminate against any person because he has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

The federal Act forbids threats, intimidation or discrimination against an individual for making a complaint, giving evidence, assisting in a complaint or other proceeding, or because an individual proposes to do so.

Other provisions are;

Ontario and Manitoba -

No person shall,

refuse to employ or continue to employ any person;

threaten to dismiss or threaten to penalize in any other way any person in regard to his employment or any term or condition thereof;

discriminate against any person in regard to his employment or any term or condition thereof; or

intimidate or coerce or impose any pecuniary or other penalty upon any person;

on the ground that such person,

has made or may make a complaint under this Act;

has made or may make a disclosure concerning the matter complained of;

has testified or may testify in a proceeding under this Act; or

has participated or may participate in any other way in a proceeding under this Act.

British Columbia -

The Human Rights Code of British Columbia states that no person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty upon, or otherwise discriminate against, any person because that person complains, gives evidence, or otherwise assists in respect of the initiation of a complaint or other proceeding under that Act.

The Alberta, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island Acts contain a different provision covering discrimination in rental practices as well as employment. As an example, the Newfoundland provision states:

No person, employer or trade union shall evict, discharge, suspend, expel or otherwise discriminate against any person because he had made a complaint...(rest as in federal provision).

Québec provides that

"The person requesting an investigation may demand that the Commission not allow disclosure of his identity during the investigation. The Commission shall grant such a demand if it is consistent with the public interest".

also;

"Every person is guilty of an offence...

who attempts to take or takes reprisals against a person, a group of persons or an organization who or which has, in good faith, requested an investigation or has given evidence or otherwise taken part in an investigation by or on behalf of the Commission".

7. Administration of Acts

The Minister of Labour is responsible for fair practices legislation in five provinces. In Nova Scotia, Manitoba and Saskatchewan it is the Attorney General, in Newfoundland it is the Minister of Manpower and Industrial Relations, and in Québec the Minister of justice is responsible. (The Alberta, Manitoba, Nova Scotia, and Saskatchewan Acts do not actually specify the Minister responsible.) In both the Northwest Territories and the Yukon, the Commissioner is responsible for the fair practices legislation.

Subject to the direction of the Minister, a director administers the British Columbia and Newfoundland Acts and a Human Rights Commission the Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan Acts. The Prince Edward Island Act is administered by the Minister of Labour and Manpower Resources. The Ordinances in the Northwest Territories and the Yukon are administered by the "officer appointed by the Commissioner to inquire into complaints under the Ordinance".

In British Columbia, Nova Scotia and Saskatchewan, a director is responsible for the actual administration. The Alberta, New Brunswick and Ontario Human Rights Commissions also have directors (although this is not specified in the New Brunswick or Ontario legislation).

In the federal jurisdiction the Human Rights Commission itself is responsible to Parliament for the administration of the Act. The Chief Commissioner is the chief executive officer of the Commission. Annual and special reports are transmitted to Parliament through the Minister of Justice.

8. Human Rights Commissions

All provinces and the Federal jurisdiction provide for Human Rights Commissions.

Besides providing for a permanent Commission of at least three members, the Newfoundland Act refers to a Human Rights Commission, which is an ad hoc body of one or more members appointed as a board of inquiry.

All provincial Commissions except Québec's, which is appointed by the National Assembly, are appointed by the Lieutenant-Governor-in-Council. The Federal Commissioners are appointed by the Governor in Council. The Prince Edward Island Commission has three members, and Québec's at least seven. The Newfoundland, New Brunswick, Nova Scotia, and Ontario Commissions are to have three or more members and the Saskatchewan, not less than three; the other three provinces do not specify a number. The Saskatchewan Commissioners are appointed for a five-year renewable term; Nova Scotia Commissioners for a specific renewable term; and in Manitoba, the Lieutenant-Governor-in-Council may determine the term of office. Prince Edward Island provides for reappointment, but terms must be staggered so that one Commissioner retires each year. Federal full-time Commissioners are appointed for a maximum term seven years and part-time members for a term not exceeding three years. Reappointment can be made.

A director may be appointed in Alberta and Saskatchewan, and must be appointed in Nova Scotia, Newfoundland and British Columbia. In Saskatchewan, the director is the chief executive officer and secretary of the Commission, and in Nova Scotia he is the chief executive officer and a member, with the status of a deputy minister.

Under the British Columbia Code, the Minister is to appoint a director who is to act as chief executive officer of the Commission and as registrar for the execution of complaints under the Act. The Minister also appoints persons to a panel who shall be eligible to serve on boards of inquiry.

In Newfoundland, the director is executive director of the Commission. Manitoba provides for boards of adjudication which are appointed by the Attorney General. These boards provide an investigative function. In cases where the Commission is unable to effect a settlement, the matter may be referred to the board of adjudication through the Minister for settlement.

9. Enforcement - Initiation

All the Acts operate through a complaint process. The Alberta and Nova Scotia Acts provide, in addition, for the investigation of a case where the Commission "has reasonable grounds for believing that a complaint exists". In Ontario, the Commission may initiate a complaint where it has reason for believing that any person has contravened any of the sections prohibiting discriminatory practices. In Manitoba the Commission may investigate on its own initiative. The federal Commission may itself initiate a complaint where it has reasonable grounds for believing that a person is engaging in or has engaged in a discriminatory practice.

In most jurisdictions the complaint must be made by the aggrieved person in writing, usually in the form prescribed.

In Ontario the complaint may be made by "any person who has reasonable grounds for believing that any person has contravened a provision of the Act". Where a complaint is made by other than the aggrieved person, the Commission may refuse to file the complaint unless the aggrieved person consents.

In Saskatchewan any person may make a complaint either orally or in writing.

In most jurisdictions the complaint must be dealt with, at least at the first stage of investigation. In Newfoundland, and the Territories it may be investigated. The British Columbia, Alberta and New Brunswick Commissions may at any stage of the proceedings dismiss a complaint that is without merit.

Alberta and British Columbia set a time limit on complaints - six months from the alleged contravention of the Acts. In Manitoba the time limit is one year. The Federal limit is one year, or such longer period as the Commission deems appropriate under the circumstances.

Complaints are made to the director in Newfoundland and British Columbia, to the officer appointed by the Commissioner in each of the Territories and to the Commission in the remaining provinces and the federal jurisdiction.

10. Enforcement - Inquiries

All the Acts provide for the settlement of complaints, if possible, by conciliation and persuasion. They provide for an initial informal investigation into a complaint by an officer who is directed to endeavour to affect a settlement.

Depending on jurisdiction, the investigation officer may be an officer of a government Department or the Commission or any other person.

In both the Northwest Territories and the Yukon where the officer fails to settle the complaint he may, where he feels the complaint has merit, recommend to the Commissioner the action that should be taken with respect to the complaint.

In the other jurisdictions, where the informal conciliation fails, a more formal inquiry including a hearing, by a board, whether ad hoc or permanent, is provided for.

A board under the federal, Alberta, British Columbia, Prince Edward Island, New Brunswick, Newfoundland, Nova Scotia and Ontario legislation is an ad hoc body, consisting of one or more persons. It is referred to in the federal Act as a Human Rights Tribunal. In Newfoundland the inquiry may be made either by the permanent Human Rights Commission or by an ad hoc Human Rights Commission consisting of one or more persons. In Saskatchewan the inquiry is conducted by the permanent Human Rights Commission.

The federal jurisdiction allows an appeal by either the complainant or person complained against, to a Review Tribunal, where the original Tribunal had fewer than three members.

In Manitoba the Human Rights Commission has three options after having investigated a complaint. It may request the Minister to appoint a Board of adjudication to hear and decide the complaint; it may endeavour to affect a settlement and failing settlement may request the Minister to appoint a Board of adjudication; or it may recommend that the Minister commence a prosecution for an offence under the Act.

Québec provides that the Commission may appoint a person other than its own personnel to make an investigation and report to it.

The board or commission is appointed by the Minister in Newfoundland and Nova Scotia, by the Minister on the recommendation of the director in the federal jurisdiction, and by the Minister on the recommendation of the Commission in Alberta, Prince Edward Island, Manitoba, New Brunswick and Ontario. In Ontario the Commission is required to recommend whether or not a board should be appointed. In British Columbia the director may refer the dispute to a board of inquiry through the Minister. In Québec and Saskatchewan the Commission makes its own decision. The Saskatchewan Commission must report to the Minister whether it is appointing a board or not; if none is appointed, the Minister may do so.

Four of the Acts (Alberta, New Brunswick, Nova Scotia and Ontario) require the Minister to communicate the names of the members of the board of inquiry to the parties to the complaint. Except in Nova Scotia, this is to be done "forthwith".

In Manitoba and Newfoundland, when the board or commission finds the complaint justified by evidence, it is required to recommend to the Minister the course that ought to be taken with respect to the complaint. In New Brunswick, recommendations are made to the Commission, which in turn makes recommendations to the Minister.

The New Brunswick Act states that the recommendations may include reinstatement with or without compensation for loss of employment.

In Alberta, the board must report to the Commission whether it finds the complaint to be justified or not, and make its recommendations where it finds the complaint justified in whole or in part.

In British Columbia, Ontario and Saskatchewan the Commission or board does not make recommendations but issues an order itself.

11. Enforcement - Orders

Except in Québec, provision is made for orders requiring compliance. It is an offence to violate such an order.

In Newfoundland upon receipt of the board's or commission's recommendations, the Minister may issue an order to put them into effect.

Orders of a federal Human Rights Tribunal or Review Tribunal may be made on order of the Federal Court of Canada, and enforceable in the same manner as an order of that Court.

In Manitoba, a board of adjudication may issue orders for compliance, compensation and exemplary damages.

The Manitoba and Newfoundland Acts provide a right of appeal from an order to the Court of Queen's Bench and the Supreme Court, respectively.

A board of adjudication in Manitoba may file its order with the court of Queen's Bench, thus making it an order of the Court.

In New Brunswick, the Human Rights Commission is authorized to issue an order to put into effect the recommendations of the board of inquiry. The order may include reinstatement with or without compensation for loss of employment. The Commission must furnish a copy of the board's recommendations to each of the persons affected and may, if the Minister deems it advisable, publish the recommendations in the manner it sees fit.

In British Columbia, if a board of inquiry decides that the Act has been contravened, it must issue an order directing the person to cease the activity in question, and may order the person concerned to take remedial action. This may include payment of lost wages and payment of damages not exceeding \$5,000. Such an order is final and may be enforced by filing a copy in the Supreme Court or a County Court.

In Saskatchewan, where the Commission finds the complaint to be justified, and the matter has not been settled in the meanwhile, it may order the contravening party to do whatever the Commission considers full compliance and to rectify any injury or to make compensation for it.

A decision or order of the Commission may be appealed to the Court of Queen's Bench.

In Ontario, the board of inquiry must decide if the Act has been contravened and may order the guilty party to comply with the Act and to rectify any injury or make compensation for it. This order may be appealed to the Supreme Court on questions of law or fact or both. The Minister is entitled to be heard in any appeal.

In Québec, when the Commission is unable to bring the parties to a settlement, it informs them of the results of its investigation, and may recommend cessation of an act, performance of an act, or payment of an indemnity. Where the recommendation is not complied with, the Commission may apply for an injunction against the person in default. The consent of the victim is required for this.

A board of inquiry in Nova Scotia has the power to order compliance, rectification of injury, or payment of compensation. Appeal lies with the Appeal Division of the Supreme Court.

In Alberta, the Commission has 30 days from the report of the board of inquiry to effect a settlement regarding the course of action with the violator. If settlement is not reached it must then immediately hand its files and records to the Attorney General, who may, within 30 days, apply to the Supreme Court for an order.

The judge may order the violator to do any or all of the following: to cease the contravention and refrain in the future from the same or a similar contravention; to make available to the aggrieved person the rights, opportunities or privileges denied; to compensate for all or part of wages or income lost or expenses incurred; to do anything else the judge considers proper to place the aggrieved person in the position he would have been but for the contravention; to pay fines.

In the Northwest Territories and the Yukon, the Commissioner, after he has received the recommendations of the officer, may issue whatever order he thinks necessary to put the recommendations into effect. A person affected by the order may appeal it within 10 days to a judge of the Territorial Court, whose decision is final.

V - TABLES

The following tables are designed to serve as a rapid reference to the main provisions of the Acts, insofar as prohibited practices are concerned. Included are exceptions allowed in the case of certain practices, and outlines of cases where the Act does not apply.

In using the tables, the reader will see the various practices listed on the left, while the grounds upon which discrimination is prohibited are listed across the top. Where the co-ordinates meet, the space is either blank or it will contain a reference. A blank space indicates no prohibition, while a reference indicates a prohibition and the section of the appropriate Act where the provision may read in detail.

Where the provisions are contained in more than one Act, the reference is preceded by "A", "B", etc. In the case of Saskatchewan, for example, the various prohibited practices are found in three separate Acts; hence, "A", "B", and "C".

A footnote numeral found at the extreme left under "Practices" indicates that a noted exception applies to all prohibited grounds, while a footnote found in a space to the right indicates an exception on a selected ground or grounds only.

CANADIAN HUMAN RIGHTS ACT

FEDERAL

Discrimination Prohibited

| Practice | Race | National or Ethnic Origin | Colour | Religion | Age | Sex | Marital Status | Pardoned Conviction | Physical Handicap |
|-------------------------------------------------------------------------------|------|---------------------------------|--------|----------|--------|-----|-------------------|------------------------|----------------------|
| Goods, Services, Facilities, Accommodation available to Public | | | | | | | | | |
| Occupancy Commercial or Residential | 5 | 5 | 5 | 5 | 55 | 5 | 5 | 5 | 5 |
| Employment ¹ | 6 | 6 | 6 | 6 | 65 | 6 | 6 | 6 | 6 |
| Employment Applications, Advertisements ¹ | 7 | 7 | 7 | 7 | 72,3,4 | 7 | 7 | 7 | 7 |
| Employee Organizations, membership, etc. ¹ | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 |
| Employee Organizations, Employer, Policy ¹ | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 |
| Equal Pay, Males, Females | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| Publication, Display etc. of Signs, Emblems, Notices, etc. | 11 | | | | | | | | |
| Telephone, Telecommunication of Hate Messages ⁶ | 12 | 12 | 12 | 12 | 125 | 12 | 12 | 12 | 12 |
| EXCEPTIONS | | | | | | | | | |
| NON-APPLICATION OF ACT | | | | | | | | | |
| bona fide occupational requirements | | | | | | | | | |
| 2 legal minimum, maximum age of particular employment | | | | | | | | | |
| 3 normal retirement age for particular employment | | | | | | | | | |
| 4 terms, conditions of pension plan | | | | | | | | | |
| 5 conformity with guidelines of Human Rights Commission | | | | | | | | | |
| 6 matters communicated by broadcasting | | | | | | | | | |

- does not affect provisions of Indian Act or provisions made pursuant to it
- pension, insurance plans, rights prior to Act

¹ bona fide occupational requirements

² legal minimum, maximum age of particular employment

³ normal retirement age for particular employment

⁴ terms, conditions of pension plan

⁵ conformity with guidelines of Human Rights Commission

INDIVIDUAL RIGHTS PROTECTION ACT

ALBERTA

Discrimination Prohibited

| Practice | Race | Religious Beliefs | Colour | Sex | Age(45-65) | Ancestry | Place of Origin | Marital Status |
|--------------------------------------------------------------------|---------|-------------------|---------|---------|------------|----------|-----------------|----------------|
| Employment, terms ² and conditions of | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) |
| Advertising, application re: preference for applicant (employment) | 7(1)(a) | 7(1)(a) | 7(1)(a) | 7(1)(a) | 7(1)(a) | 7(1)(a) | 7(1)(a) | 7(1)(a) |
| Requirement of ² information on application form | 7(1)(b) | 7(1)(b) | 7(1)(b) | | | 7(1)(b) | 7(1)(b) | 7(1)(b) |
| Membership in trade union, employers, occupational association | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 |
| Publishing ^{2,4} , display of signs, symbols, emblems | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) |
| Provision of public accommodation, facilities | 3 | 3 | 3 | 3 | | 3 | 3 | |
| Tenancy in commercial, or self-contained dwelling unit | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| Pay of males | | | | | 5(1)(b) | | | |
| Pay of females | | | | | 5(1)(a) | | | |

EXCEPTIONS

Operation of bona fide insurance, pension plan where a bona fide qualification for employment

²Where a bona fide qualification for employment

³Identification of facilities customarily used by one sex

⁴Free expression of opinion

NON-APPLICATION OF ACT

- Limitations re: employment, advertising, etc. re: employment do not apply to:

- Domestic employee in private home
- Farm employee who resides in private home of farmer who employs him

- Limitations re: display of signs, symbols, etc. Do not apply to non-profit political, religious, or common ancestry or place of origin organizations

HUMAN RIGHTS CODE

BRITISH COLUMBIA

Discrimination Prohibited

| Practice | Race | Religion | Colour | Sex | Marital Status | Age(45-65) | Ancestry | Place of Origin | Political Belief |
|--------------------------------------------------------------------------------------------|---------|----------|---------|-------------------------------------|----------------|------------|----------|-----------------|------------------|
| *Employment, terms²,³ and conditions of | | | | | | | | | |
| 8(1) | 8(1) | 8(1) | 8(1)1 | 8(1) | 8(1) | 8(1)4 | 8(1) | 8(1) | 8(1) |
| Preference, limitation in application forms, advertisements, inquiries re: job applicant | 7(a) | 7(a) | 7(a) | 7(a) | 7(a) | 7(a) | 7(a) | 7(a) | 7(a) |
| Requirement of information by job applicant | 7(b) | 7(b) | 7(b) | 7(b) | 7(b) | 7(b) | 7(b) | 7(b) | 7(b) |
| Publishing, signs, etc. ⁷ | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) | 2(1) |
| *Membership in trade ³ union, employer's associations, occupational association | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) |
| *Provision of public accommodation, service, facility | 3(2)(a) | 3(2)(a) | 3(2)(a) | 3(2)(b) ¹ , ⁵ | 3(2)(a) | 3(2)(a) | 3(2)(a) | 3(2)(a) | 3(2)(a) |
| Sale of property, interest in property | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Tenancy, terms of tenancy | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 |
| Pay of males and females | | | | | 6 | | | | |

EXCEPTIONS

¹Public decency

²Where any act re: Canadian citizenship constitutes reasonable cause

³Where criminal or summary conviction relates to employment, membership

⁴Operation of bona fide insurance, pension, seniority plan

⁵Determination of insurance premiums of benefits

⁶Shared accommodation

⁷Free expression of opinion

NON-APPLICATION OF ACT

- Any charitable, philanthropic, educational, fraternal, religious, or social organization (non-profit) having as a primary purpose the promotion of interests and welfare of an identifiable class or group characterized by common race, religion, age, sex, marital status, political belief, colour, ancestry, place of origin may give preference to members of the identifiable group or class.

| Practice | Race | Colour | Religion | National Origin | Ancestry | Place of Origin | Age | 19 and Over | Marital Status | Sex | Physical Disability |
|-----------------------------------------------------------------------|------|--------|----------|-------------------|-------------------|-----------------|-------------------|-------------------|-------------------|-------------------|---------------------|
| Employment, terms ¹ and conditions of | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) |
| Operation of employment agency ¹ | 3(2) | 3(2) | 3(2) | 3(2) | 3(2) | 3(2) | 3(2) ² | 3(2) | 3(2) | 3(2) | 3(2) ³ |
| Pre-employment inquiries, use of application forms | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) ² | 3(4) | 3(4) | 3(4) | 3(4) ³ |
| Membership, etc. ¹ in trade unions employers organizations | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) ² | 3(3) | 3(3) | 3(3) | 3(3) ³ |
| Provision of occupancy in commercial or dwelling | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) ³ |
| Conveyance of property | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) |
| Provision of public accommodation, services, facilities | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) ³ | 5(1) ³ | 5(1) ³ |
| Publishing signs, ⁴ notices, symbols, etc. | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) ³ | 6(1) ³ | 6(1) ³ |
| Membership in trade, professional, business association ⁶ | 7(1) | 7(1) | 7(1) | 7(1) ⁵ | 7(1) ⁵ | 7(1) | 7(1) | 7(1) | 7(1) | 7(1) | 7(1) |

EXCEPTIONS

¹Bona fide occupational qualification²Operation of bona fide pension, retirement, insurance plan³Bona fide qualification as determined by commission⁴Free expression of opinion⁵Application of statutory restrictions limiting membership to Canadian citizens or British subjects⁶Statutory provision can lawfully limit membership to Canadian citizens or British subjects

| Practice | Race | Religion | Religious Creed | Sex | Political Opinion | Colour | Ethnic, Nat. or Social Origin | Age 19-65 | Marital Status | Attachment Seizure, etc. of Pay |
|---------------------------------------------------------------------------|-------|----------|-----------------|-------------------|-------------------|--------|-------------------------------|-----------|----------------|---------------------------------|
| Employment, terms ² and conditions of | 9(1) | 9(1) | 9(1) | 9(1) ¹ | 9(1) | 9(1) | 9(1) | 9(1) | 9(1) | 9A(1) ⁴ |
| Use of employment agencies | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9(2) | 9A(2) ⁴ |
| Trade union ² membership | 9(3) | 9(3) | 9(3) | 9(3) | 9(3) | 9(3) | 9(3) | 9(3) | 9(3) | 9A(3) ⁴ |
| Advertisement, ^{1,2} application forms, enquiries re; employment | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) | 9(4) ⁴ |
| Pay of females and males | | | 10(1) | | | | | | | |
| Provision of public accommodation, services, facilities | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | |
| Provision of commercial or dwelling units | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | |
| Publishing of signs, ³ symbols, emblems, etc. | 11(1) | 11(1) | 11(1) | 11(1) | 11(1) | 11(1) | 11(1) | 11(1) | 11(1) | |

EXCEPTIONS

¹Bona fide occupational qualification

²Operation of bona fide pension, retirement, employee insurance plan

³Free expression of opinion

⁴Where duties include collecting, receiving or depositing of money belonging to employer

NON-APPLICATION OF ACT

- Employment practices section does not apply to:

- a) Certain non profit organizations (religious fraternal)

- b) Domestic employed and living in private home

NOVA SCOTIA

A. HUMAN RIGHTS CODE
B. LABOUR STANDARDS CODE

Discrimination Prohibited

| Practice | Race | Religion | Creed | Colour | Ethnic or Nat. Origin | Sex | Age(40-65) | Physical Handicap | Marital Status |
|--------------------------------------------------------------------|---------|----------|---------|---------|--------------------------|----------|------------|----------------------|-------------------|
| Employment terms and conditions of | A-8(1) | A-8(1) | A-8(1) | A-8(1) | A-8(1) | | | A-11B1 | A-11B2 |
| Classification, referral, etc. by employment agencies | A-8(2) | A-8(2) | A-8(2) | A-8(2) | A-8(2) | A-11A(2) | | A-11B1 | A-11A(2) |
| Use of application forms, advertisements, pre-employment enquiries | A-8(3) | A-8(3) | A-8(3) | A-8(3) | A-8(3) | | | A-11B1 | A-11B2 |
| Pay of females | | | | | | B-55(1) | | | |
| Trade union membership | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 | A-11A(2) | A-11B1 | A-11A(2) |
| Professional, trade, business association | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 | A-11A(2) | A-11B1 | A-11A(2) |
| Admission of applicants for volunteer services | A-11(1) | A-11(1) | A-11(1) | A-11(1) | A-11(1) | A-11(1) | A-11A(2) | A-11B1 | A-11B |
| *Publishing signs, ³ notices, symbols, etc. | | | | | | | | | |
| Associating with individuals class of individuals | A-12A | A-12A | A-12A | A-12A | A-12A | A-11A | | | |
| Provision of public services, facilities, accommodation | A-4 | A-4 | A-4 | A-4 | A-4 | A-4 | | | |
| Property conveyance | A-6 | A-6 | A-6 | A-6 | A-6 | A-6 | | | |
| Provision of housing ⁴ or commercial unit occupancy | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | | | |
| EXCEPTIONS | | | | | | | | | |
| Operation of bona fide pension, retirement, insurance plan | | | | | | | | | |

¹Operation of bona fide pension, retirement, insurance plan

²Bona fide qualification for employment, activity, association

³Free expression of opinion

⁴Where unit is single, non-advertised, non-listed room in dwelling the rest of which is occupied by landlord and family.

NON-APPLICATION OF ACT

- Employment practices section does not apply to 1

a) Domestic employee and living in a private

b) Certain non-profit groups (religious, ethnic)

- Volunteer services section does not apply to certain non-profit organizations (religious, ethnic)

*Discrimination for any purpose prohibited (12(1))

Discrimination Prohibited

| Practice | Race | Creed | Colour | Nationality | Ancestry | Place of Origin | Sex | Marital Status | Age (40-65) |
|------------------------------------------------------------|------------------|------------------|------------------|------------------|------------------|----------------------|------------------|------------------|------------------|
| Employment terms and conditions advertising re: employment | A-4(1) A-4(2) | A-4(1) A-4(2) | A-4(1) A-4(2) | A-4(1) A-4(2) | A-4(1) A-4(2) | A-4(1) A-4(2) | A-4(1) A-4(2) | A-4(1) A-4(2) | A-4(1) A-4(2) |
| Use of application forms | A-4(4) | A-4(4) | A-4(4) | A-4(4) | A-4(4) | A-4(4) | | | |
| Retalial, etc. by employment agency | A-4(5) | A-4(5) | A-4(5) | A-4(5) | A-4(5) | A-4(5) | A-4(5) | A-4(5) | A-4(5) |
| Trade union membership | A-4a(1) | A-4a(1) | A-4a(1) | A-4a(1) | A-4a(1) | A-4a(1) | A-4a(1) | A-4a(1) | A-4a(1) |
| Professional association membership | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) | A-4a(2) |
| Display of emblems, ² symbols, signs | A-1(1) | A-1(1) | A-1(1) | A-1(1) | A-1(1) | A-1(1) | A-1(1) | A-1(1) | A-1(1) |
| Provision of public accommodation, services | A-2(1) | A-2(1) | A-2(1) | A-2(1) | A-2(1) | A-2(1) | A-2(1) | A-2(1) | A-2(1) |
| Occupancy in housing commercial units | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) |
| Pay of males and females | | | | | | B-33(1) ⁵ | | | |

EXCEPTIONS

1Where bona fide qualification for employment

2Free expression of opinion not interfered with

3Public decency

4Where occupancy other than for owner and family is restricted to persons of some sex

5Where difference due to seniority, merit, quality, quantity systems

NON-APPLICATION OF ACT

- Limitation re: employment do not apply to

a) religious, philanthropic, educational, fraternal or social organization not operated for profit

b) domestic employee in private home

HUMAN RIGHTS ACT

PRINCE EDWARD ISLAND

Discrimination Prohibited

| Practice | Race | Religion | Creed | Colour | Sex | Marital Status | Ethnic or National Origin | National Belief | Age (18-65) | Physical Handicap |
|----------------------------------------------------------------|-------|----------|-------|--------|-------|----------------|---------------------------|-----------------|-------------|-------------------|
| Provision of Public Accommodation, Services, Facilities | | | | | | | | | | |
| | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | |
| Occupancy Commercial or Self-contained Dwelling | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | 3(1) | |
| Property Sales | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | |
| Employment, Terms or Conditions of | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) | 6(1) |
| Employment Agencies ² | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) | 6(2) |
| Application Forms ² | 6(2) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) | 6(3) |
| Equal Pay ³ | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 |
| Membership in Employee Organization | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 |
| Professional Business or Trade Association | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 |
| Person, Agency Carrying Out Public function ⁴ | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| Advertising ⁶ | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) | 12(1) |

EXCEPTIONS

1Structure having 2 or more housing units;
self-contained unit in structure having 2 or more self-contained units

2Domestic employed and living in single family dwelling; exclusively religious, ethnic non-profit organizations

3Seniority systems; production performance systems

4Religious, ethnic non profit organizations

5Bona fide retirement, pension, group insurance plan

6Free expression of opinion

NON-APPLICATION OF ACT

- identification of facilities used by one sex
- display, publication by political, religious, national, non profit organization
- philanthropic, fraternal, service groups in sex of membership qualifications
- bona fide qualification limitations
- trusts, deed, agreements made before act comes into force

Discrimination Prohibited

| Practice | Race | Colour | Sex | Civil Status | Religion | Political Convictions | Language | Ethnic or National Origin | Social Condition | Sexual Orientation |
|----------------------------------------------------------------------------------|------|--------|-----|--------------|----------|-----------------------|----------|---------------------------|------------------|--------------------|
| Publishing of sign, symbol, etc. | 11 | 11 | 11 | 11 | 11 | 11 | 11 | 11 | 11 | 11 |
| Judicial Act re: goods, services offered to public | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 |
| Discriminatory clauses in judicial Act | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 |
| Access to Public Transport, Public Place (Hotel Restaurant, Theatre, etc.) | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 |
| Employment terms ² and conditions of | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 |
| Membership Association of Employees, Employers, Professional, Occupational Group | 17 | 17 | 17 | 17 | 17 | 17 | 17 | 17 | 17 | 17 |
| Employment Agencies | 18 | 18 | 18 | 18 | 18 | 18 | 18 | 18 | 18 | 18 |
| Equal Pay ³ | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 | 19 |

NON-APPLICATION OF ACT

provisions against discriminatory publications, discriminatory clauses in judicial acts, discrimination in employment or by occupational associations and in equal pay do not apply to pension, life insurance or other benefit plans unless the discrimination is founded on race, colour, religion, political convictions, language, ethnic or national origin or social conditions

EXCEPTIONS

Lease of one room in dwelling where lessor and his family reside, and room not advertised to public

2Charitable, religious, political, educational non-profit organizations

3Seniority, experience, productivity, overtime systems

A. SASKATCHEWAN BILL OF RIGHTS ACT
 B. FAIR EMPLOYMENT PRACTICES ACT
 C. FAIR ACCOMMODATION PRACTICES ACT
 D. LABOUR STANDARDS ACT

Discrimination Prohibited

| Practice | Race | Religion | Religious Creed | Colour | Sex | Nationality | Ancestry | Place of Origin |
|-------------------------------------------------------------------------|-------------------|-------------------|-----------------|-------------------|---------|-------------|----------|-----------------|
| Employment, terms and conditions of | B-3 | B-3 | B-3 | B-3 | B-3 | B-3 | B-3 | B-3 |
| Use of employment agencies that discriminate | B-4 | B-4 | B-4 | B-4 | B-4 | B-4 | B-4 | B-4 |
| Membership in trade unions | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 | B-5 |
| Use of employment applications, advertisements pre-employment enquiries | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 | B-7 |
| Carrying on any business, enterprise, occupation | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 | A-8 |
| Ownership, occupancy of land | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 | A-9 |
| Membership in professional, trade association | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 | A-10 |
| Enrollment in educational institution | A-11 | A-11 ² | A-11 | A-11 ² | A-11 | A-11 | A-11 | A-11 |
| Publication, display ³ of signs, symbols, emblems | A-12(1) C-4(1) | A-12(1) | A-12(1) | A-12(1) | A-12(1) | A-12(1) | A-12(1) | A-12(1) |
| Provision of public accommodation, facilities, services | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 | C-3 |
| Equal pay (males and females) | | | | | D-4 1 | | | |

EXCEPTIONS

¹Bona fide occupational qualification

²School that:

- a) is run by religious order or society
- b) enrolls a particular sex, creed, religion exclusively

³Free expression of opinion

NON-APPLICATION OF ACTS

- Fair employment practices act not applicable to employer who is non-profit charitable, philanthropic, fraternal, religious, social organization or an organization (non-profit) operated for welfare of religious or racial group

FAIR PRACTICES ORDINANCE

NORTHWEST TERRITORIES

Discrimination Prohibited

| Practice | Race | Creed | Colour | Sex | Marital Status | Nationality | Ancestry | Place of Origin | Place of Residence |
|------------------------------------------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|
| Employment, terms and conditions of | 3(1) ¹ | 3(2) |
| Employment application forms, advertisements, pre-employment enquiries | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) | 3(3) |
| Trade union membership | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) | 3(4) |
| Provision of public accommodation, facilities, services | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) | 4(1) |
| Provision of self-contained dwelling units, terms of occupancy | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) | 4(2) |
| Publication of ² signs, notices, emblems, etc. | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) | 5(1) |
| Pay of females | | | | | 6(1) | | | | |

EXCEPTIONS

1Bona fide occupational qualification

2Free expression of opinion

NON-APPLICATION OF ORDINANCE

- Employment discrimination provisions do not apply to:

a) Domestic in private home

b) Non-profit charitable, philanthropic, educational, fraternal, religious, social organizations or organizations operated primarily to Foster welfare of a religious or racial group

c) School or board of trustees re: hiring where religious instruction included in curriculum

YUKON TERRITORY
 A. FAIR PRACTICES ORDINANCE
 B. LABOUR STANDARDS ORDINANCE

Discrimination Prohibited

| Practice | Race | Religion | Religious Creed | Colour | Ancestry | Sex | Marital Status | Ethnic or Nat. Origin |
|-------------------------------------------------------------------------------------------------|--------|----------|-----------------|--------|----------|--------|----------------|-----------------------|
| Employment, ¹ terms and conditions of | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) | A-3(1) |
| Use of application ¹ forms | A-3(2) | A-3(2) | A-3(2) | A-3(2) | A-3(2) | A-3(2) | A-3(2) | A-3(2) |
| Trade union membership | A-3(3) | A-3(3) | A-3(3) | A-3(3) | A-3(3) | A-3(3) | A-3(3) | A-3(3) |
| Provision of public accommodation, services, facilities | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) | A-4(1) |
| Provision of occupancy in self-contained dwelling units | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) | A-4(2) |
| Publication in newspapers or display on property one controls, of signs, symbols, emblems, etc. | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) | A-5(1) |
| Pay of females | | | | | | | B-12.1(1) | |
| Pay of males | | | | | | | B-12.1(1) | |

EXCEPTIONS

¹Bona fide qualification for employment
 Accommodation, services, facilities restricted to persons of same sex

NON-APPLICATION OF ACTS

- Employment practices section of fair practices ordinance not applicable to:
 - a) Domestic service in private home
 - b) Non-profit charitable, philanthropic, educational, fraternal, religious, social organization or organizations for welfare of a religious or racial group
 - c) School board or trustees, where religious instruction in curriculum
- Occupancy provisions do not apply to apartment buildings with less than seven self-contained units

VI - ENFORCEMENT PROCEDURE - CHARTS

The following charts demonstrate usual procedure used by the Commissions to enforce the provisions of their respective Acts, and are meant to be used as an outline only.

In many cases variations in normal procedure may occur. Also, steps for prosecutions are not shown. These can vary from one jurisdiction to another and from case to case within a given jurisdiction.

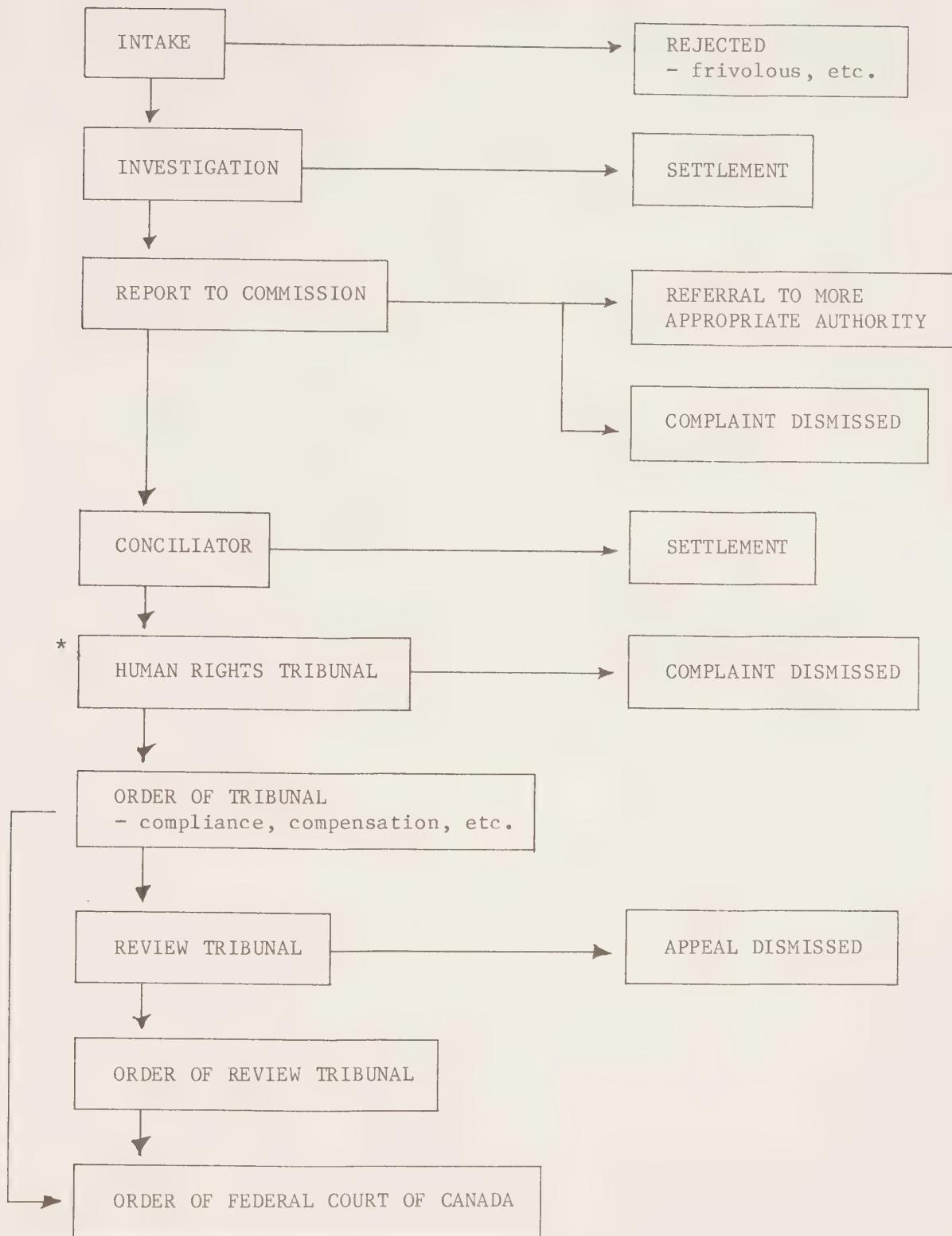
For example, the word "intake" is used at the beginning in each chart. This can mean complaint, third party complaint, initiation by the commission, etc.

Also, appeals further to those indicated are possible (i.e., to Supreme Court of Canada), unless the legislation indicates otherwise (as in N.W.T. and Yukon).

The reader is cautioned, therefore to consult the statutes and/or the various Commissions for clarification or amplification.

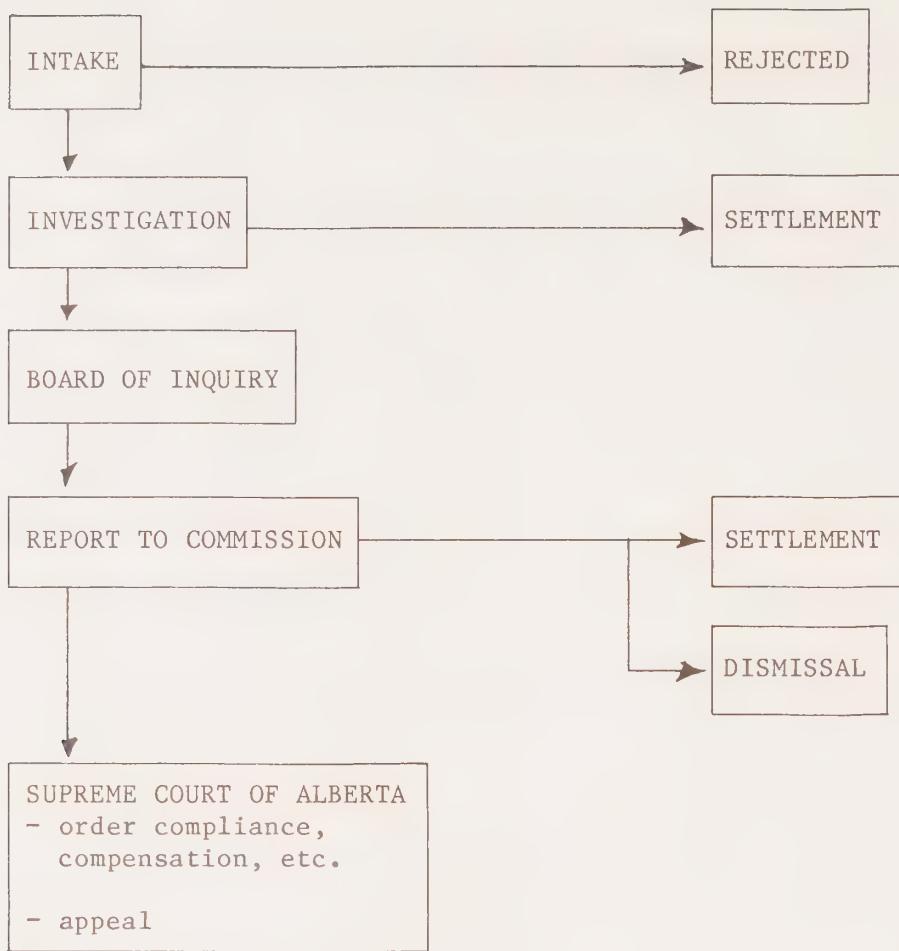
The Yukon and Northwest Territories have no human rights commissions, and enforcement is effected through the Territorial Commissioner.

FEDERAL

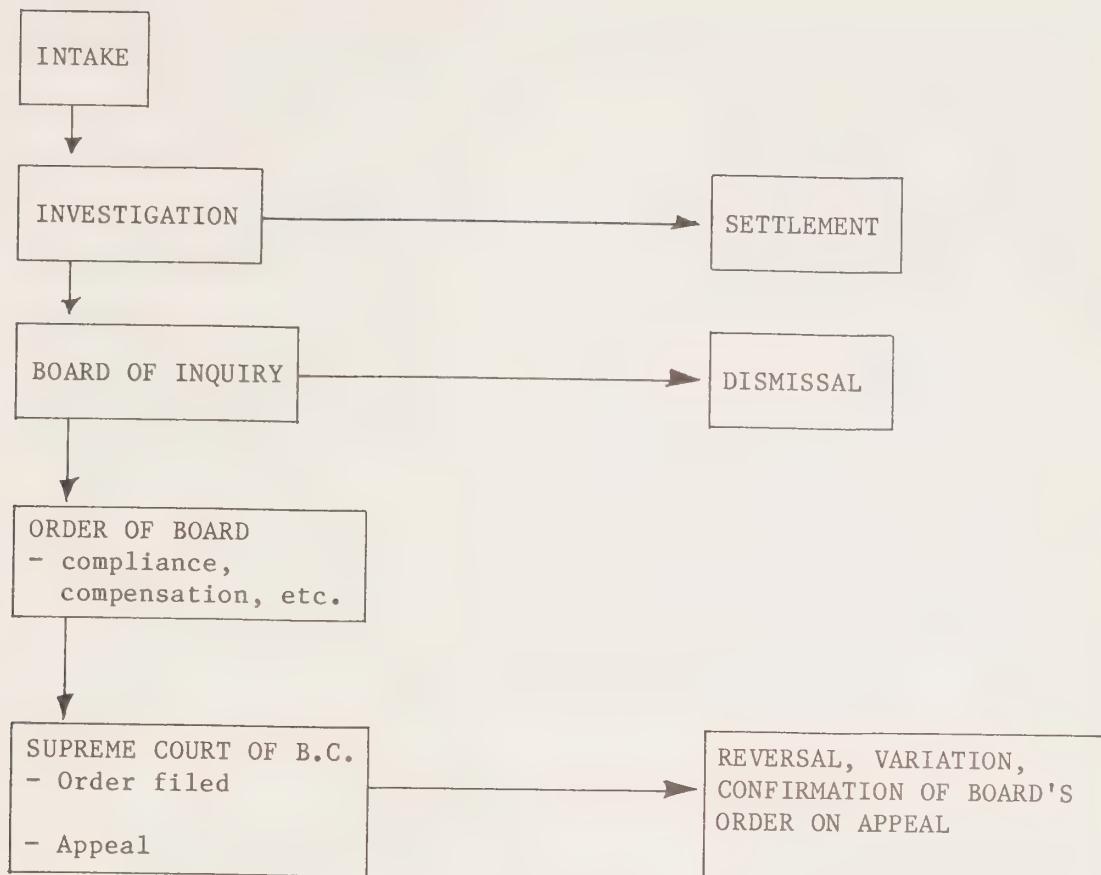


*May be appointed at any stage after filing of complaint

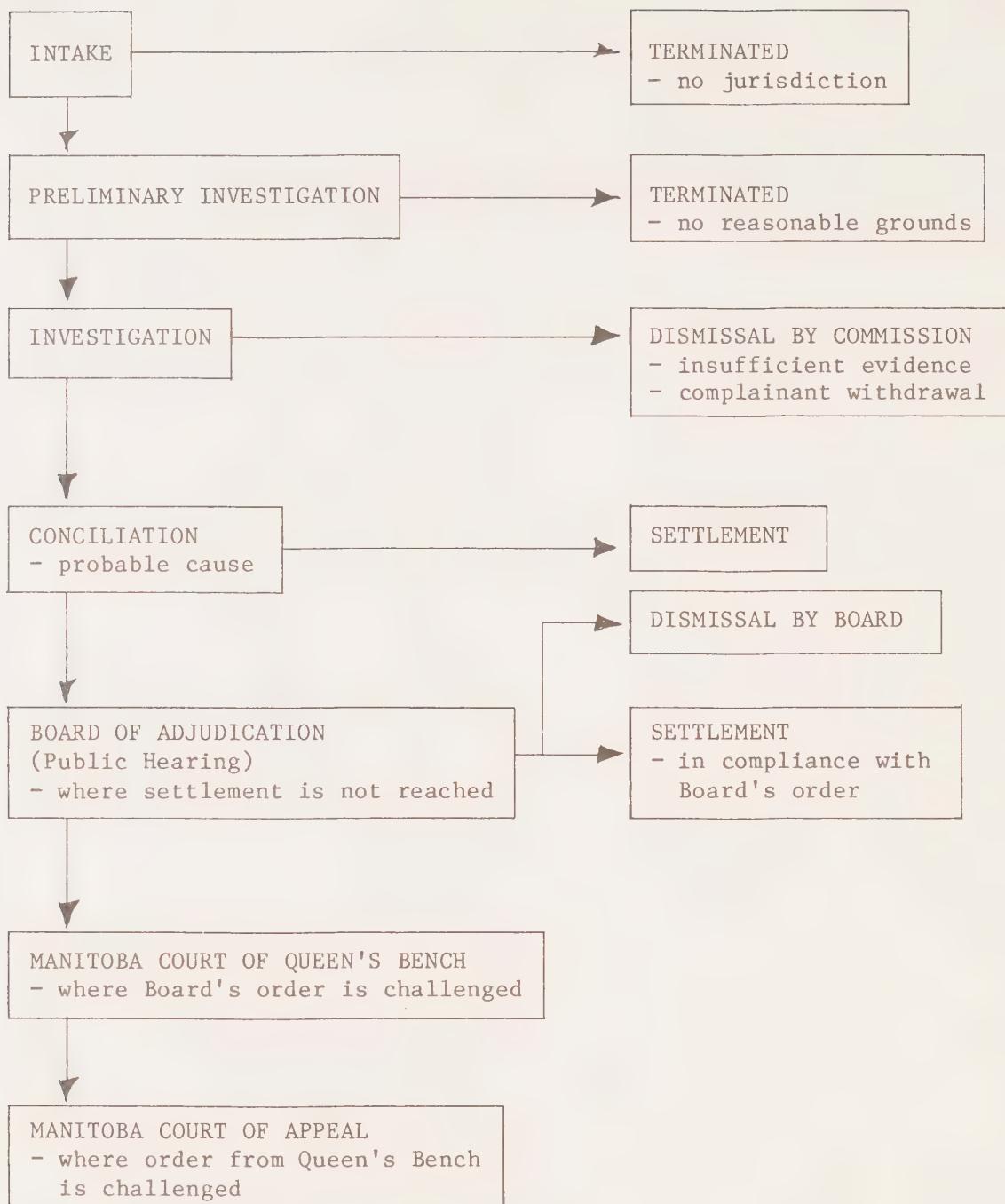
ALBERTA



BRITISH COLUMBIA

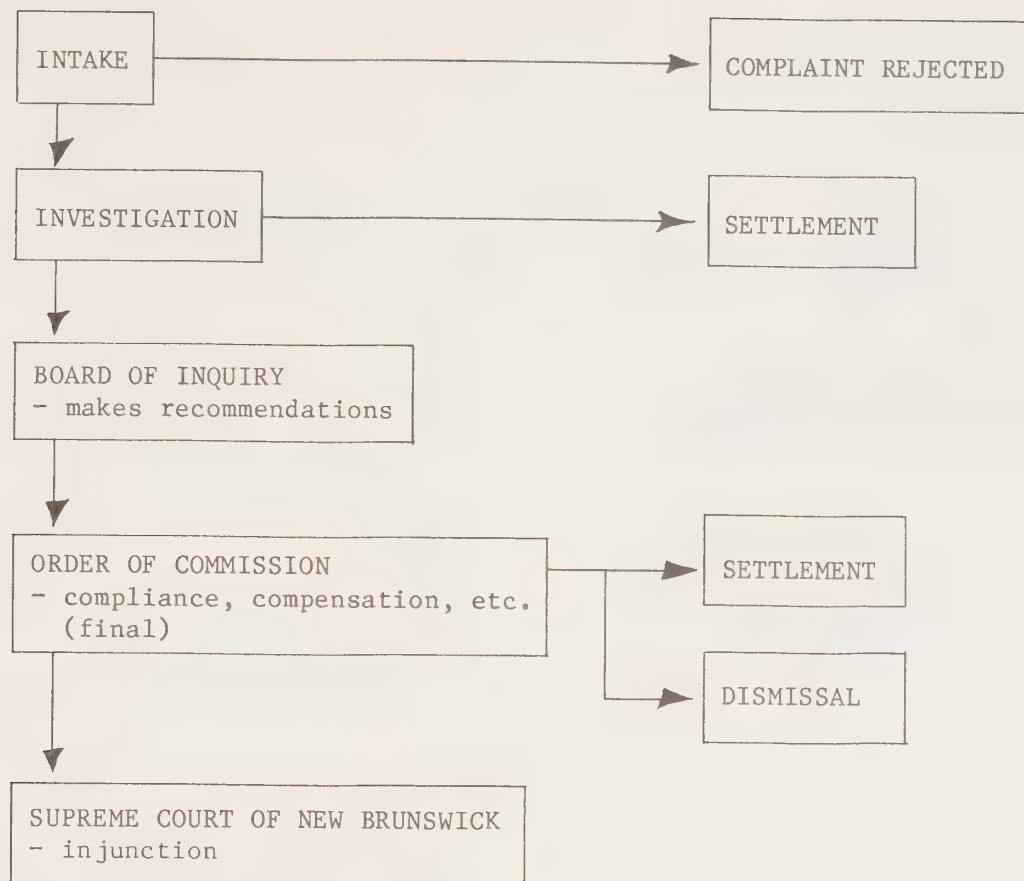


MANITOBA

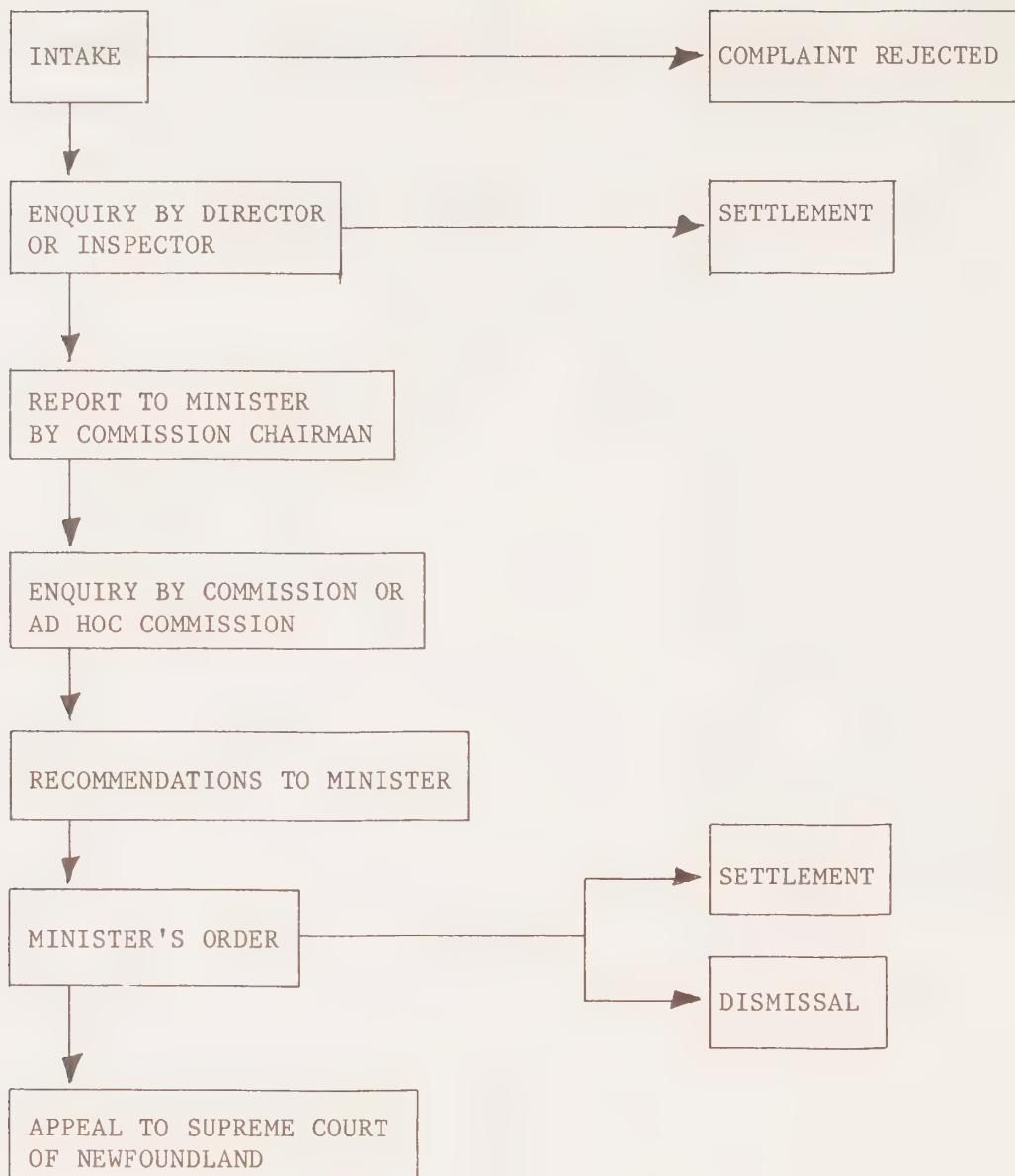


*After investigation, the Commission may decide at its discretion not to pursue conciliation but to choose alternative routes of a Board of Adjudication or prosecution.

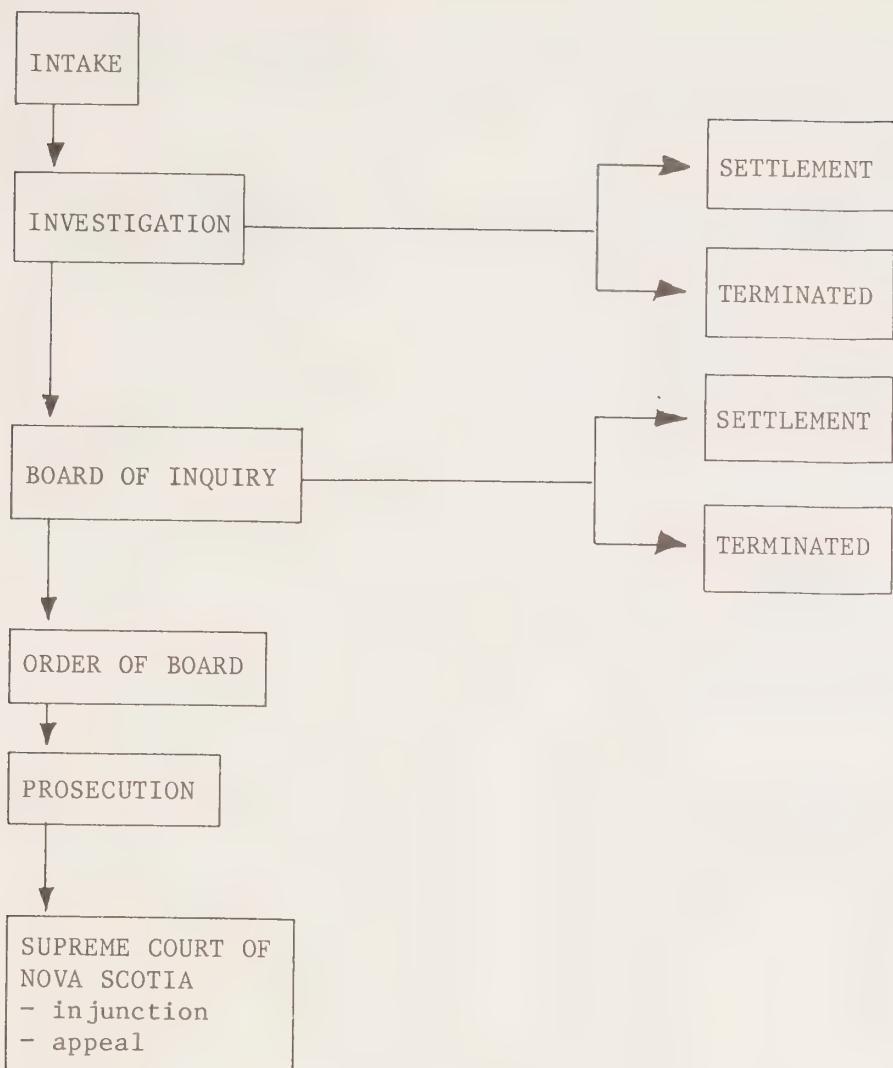
NEW BRUNSWICK



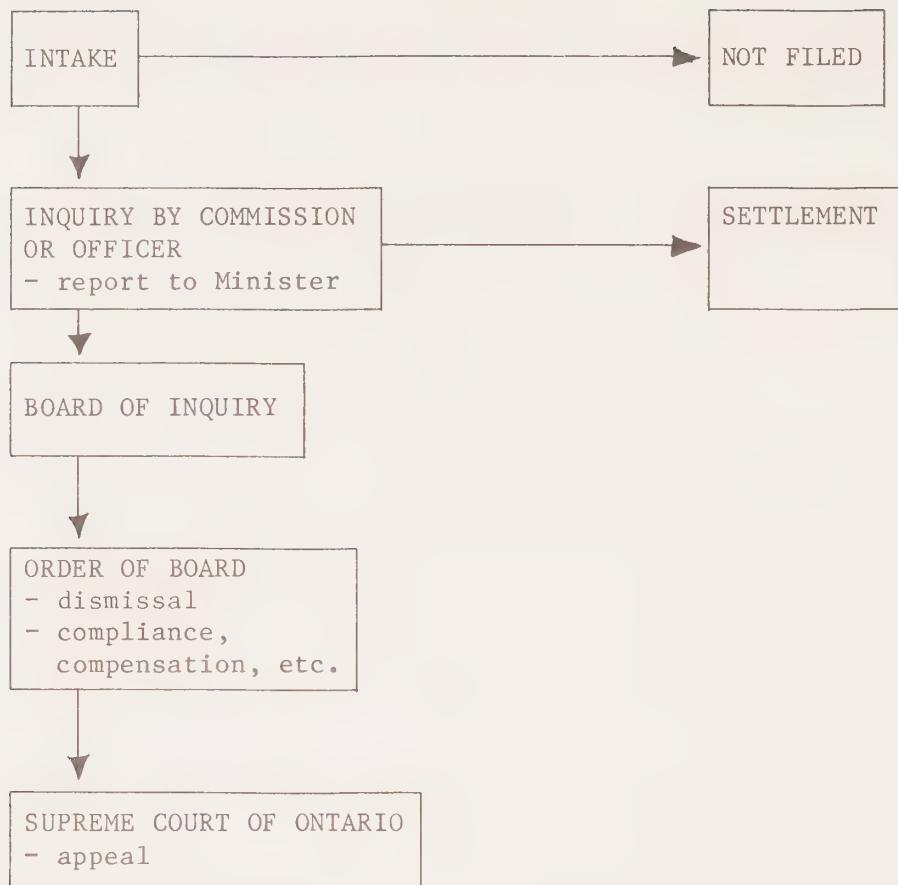
NEWFOUNDLAND



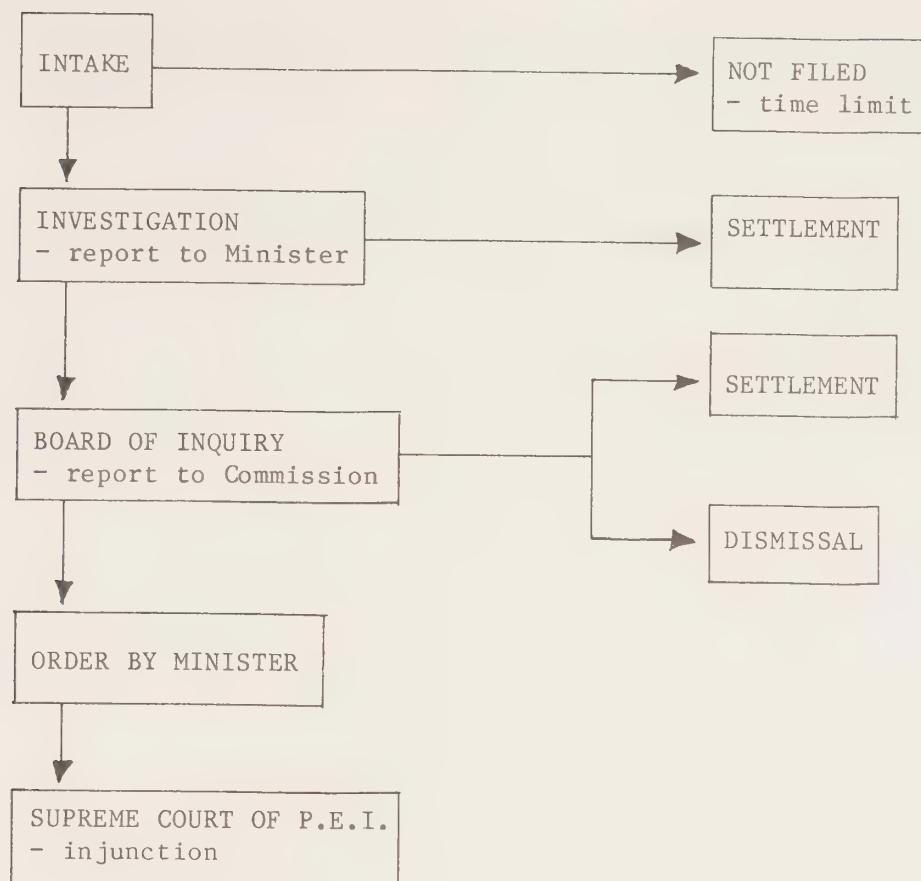
NOVA SCOTIA



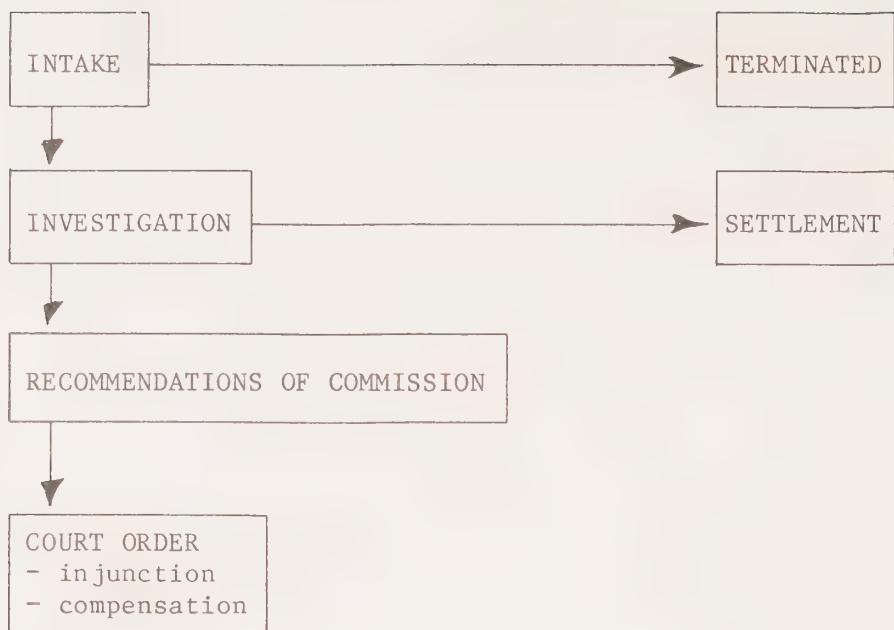
ONTARIO



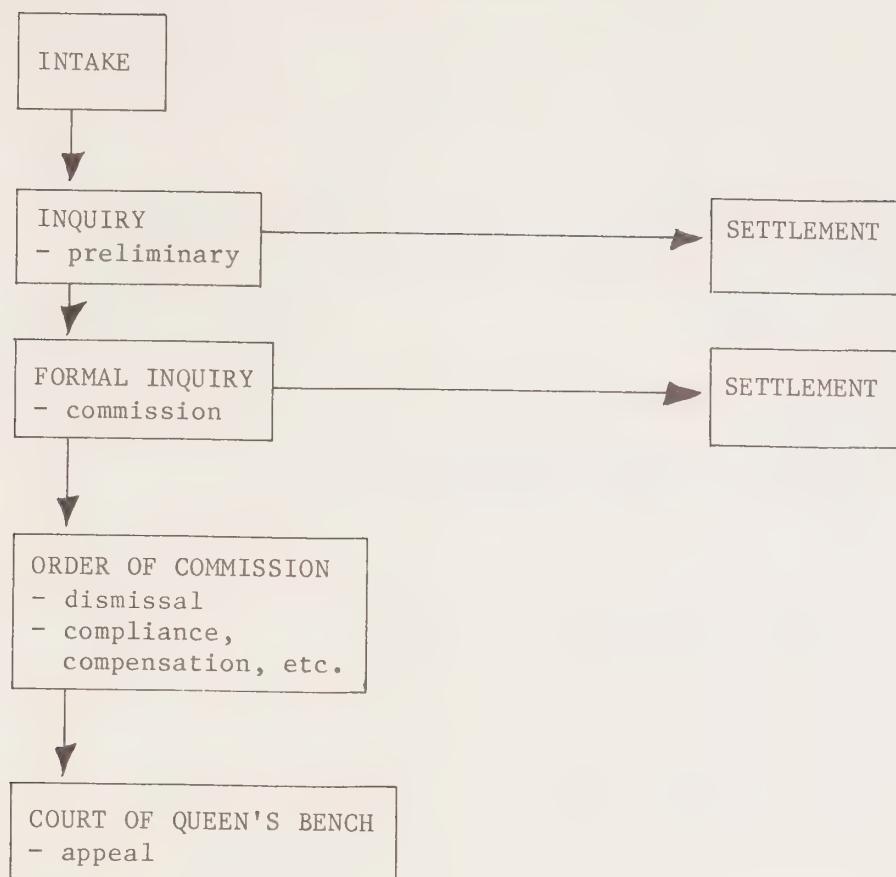
PRINCE EDWARD ISLAND



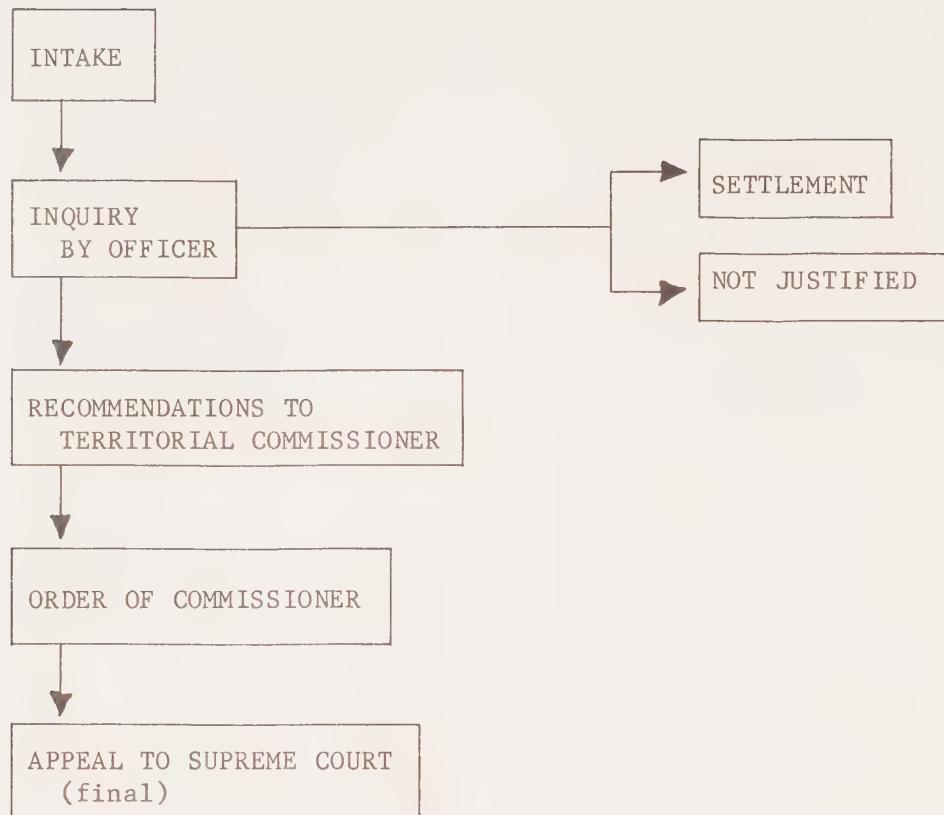
QUEBEC



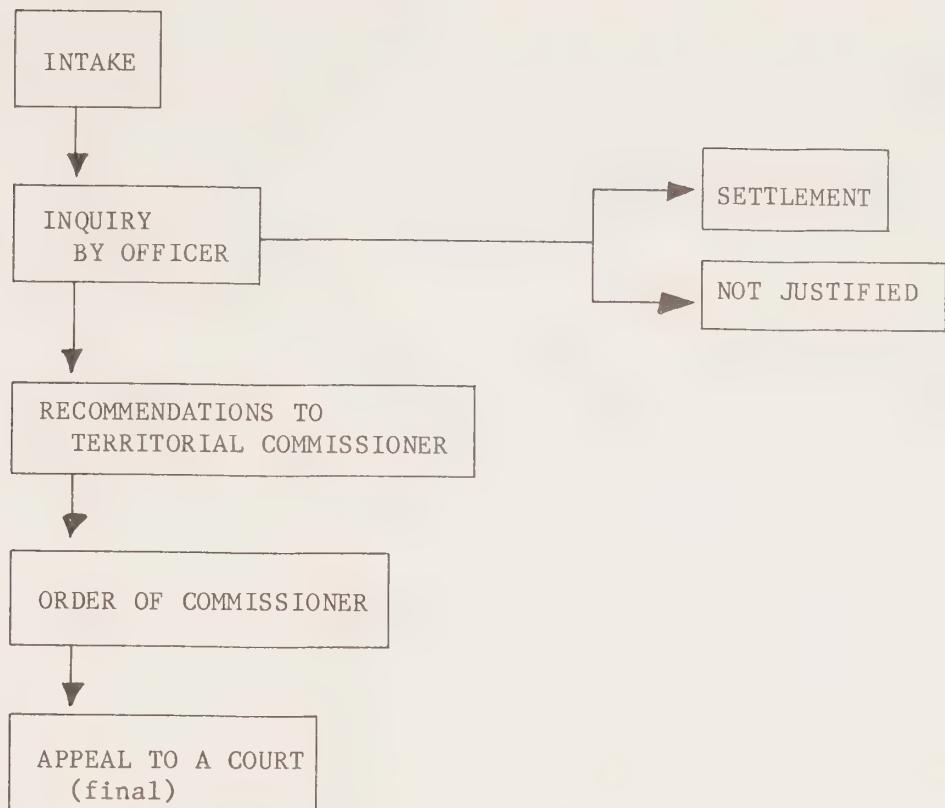
SASKATCHEWAN



NORTHWEST TERRITORIES



YUKON TERRITORY



VII - CASES

The following cases are summaries only, and are included here solely for the interest of the reader as samples of the types of cases being adjudicated in the various jurisdictions.

In certain cases appeals are pending and the reader should read the following summaries with this fact in mind.

BRITISH COLUMBIA

(provision of services customarily made available to the public)

Heerspinck & Insurance Corporation of British Columbia

Although the merits of this case have not been decided, it may be of interest to readers in that it affirms the jurisdiction of the Commission re: insurance.

In January 1977 a Human Rights Board of Inquiry was appointed to hear the complaint of Robert Heerspinck that the Insurance Corporation of British Columbia cancelled his home fire insurance policy because he had been charged with possession of an trafficking in, marijuana. The complainant alledged that the cancellation of his insurance constituted a denial of a public service without reasonable cause contrary to section 3 of the Human Rights Code of British Columbia.

At the hearing, the ICBC argued, in a preliminary objection, that the Board of Inquiry had no jurisdiction to hear the complaint because the Human Rights Code does not apply to matters of insurance. The argument was that contracts of insurance are not a service customarily available to the public and that the language of section 3 of the Code is meant to deal only with common carriers such as inkeepers.

It was further argued by ICBC that all matters pertaining to contracts of insurance are dealt with by the Insurance Act and the specific right to cancel insurance are provided for in section 5 of that act.

The Board examined section 5 of the Insurance Act with states:

"5(1) This contract may be terminated
(a) by the insurer giving to the insured
fifteen days' notice of termination by
registered mail, or five days'
written notice of termination
personally delivered;..."

and concluded that the Insurance Act is silent on the matter of the right to terminate insurance and deals only with the procedure for termination.

The Board also referred to section 3(2)(b) of the Human Rights Code which states that the sex of a person is not reasonable cause for denial or discrimination in a public service unless it relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of insurance. This was seen by the Board as meaning that the legislature did turn its attention to the impact of the Human Rights Code upon insurance and made specific exempting provisions for the one particular aspect of sex. The board concluded that on all other grounds but sex, matters of insurance are not exempt from the provisions of section 3.

In its decision the board states:

"It must be borne in mind that the Human Rights Code is in some respects legislation of a rather special character...It is concerned with broad categories of behavior and requires an interpretative approach that is consistent with its character. In my view it demands that fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

O.C.B.C. vs. Heerspinck

O.C.B.C. appealed the Board of Inquiry ruling that the Human Rights Code does apply to matters of insurance to the B.C. Supreme Court.

The Court upheld the Board of Inquiry ruling. Part of the appeal judgment by Mr. Justice Meredith states:

"Certainly the Code, if applied to the insurance industry, does have the effect of altering the right of insurers. But it seems plain to me that the words contained in s.3(1) indicate an intention to do just that; to abrogate the right of merchants and professionals and others to withhold goods and services without cause. To hold that the code does not apply to insurers would be to hold that it does not apply to all kinds of other businesses which may be the subject of special statutes. The Code would be emasculated. ...I conclude that the appellant can only cancel the insurance policy owned by the respondent for reasonable cause and that this Board of Inquiry has jurisdiction to deal with the matter."

MANITOBA

In the matter of the Manitoba
Human Rights Act, CCSM Chapter H-175

and

In the matter of the complaint of
Peter Derksen vs. Flyer Industries Ltd.
with regard to alleged discrimination
on the basis of age prohibited by
section 6 of the Human Rights Act

The complainant, who attained the age of 65 on January 9, 1975, had been employed with the respondent employer since 1962 as a lathe operator.

On or about June 6, 1973, the employer issued a manual of corporate policies, included in which were two documents relating to retirement. One made retirement mandatory at age 65 and the other provided for a procedure for extending employment beyond the age of retirement. Some employees were, in fact, given employment extensions beyond the age of 65.

On or about February 3, 1975, the complainant, in spite of having asked for an extension, was advised that he was being retired, effective forthwith. He left the plant and was not subsequently re-employed. He later (February 6, 1975) filed a grievance pursuant to the collective agreement by which he had been covered. The nature of the grievance was that he had been unjustly terminated by Flyer Industries, the official reason given having been retirement. A Board of Arbitration dismissed the grievance, finding that Mr. Derksen had been properly retired and not unjustly terminated.

A complaint was filed with the Human Rights Commission on April 30, 1975, following the reference of the grievance to arbitration, but before the hearing by the Arbitration Board. A Board of adjudication was appointed to hear the complaint.

The complainant's work had been satisfactory. He had not been a member of the company's voluntary pension plan, made available under the collective agreement.

The jurisdiction of the Board of Adjudication to hear and determine the complaint was challenged by Flyer Industries on the grounds that since the relationship of Derksen and Flyer Industries was governed by a collective agreement, only a Board of Arbitration established pursuant to that agreement could properly hear and determine the merits of Mr. Derksen's position, and since the complainant had taken and exhausted his remedies under the collective agreement, i.e., arbitration, he could not pursue what was an alternative remedy under the Human Rights Act.

It was decided that the issues before the Board of Adjudication were the determination of whether there had been age discrimination, and the enforcement of the legislation. The Board of Adjudication was not asked to interpret the collective agreement but to determine the matter of age discrimination, which is prohibited under the Human Rights Act.

The Board of Arbitration was concerned with the interpretation and enforcement of the collective agreement following the grievance by Mr. Derksen that he had been unjustly terminated.

The Manitoba Human Rights Act (sec. 6) prohibits discrimination on the basis of age. No upper limit is placed on the definition of age.

Section 7(2) of that Act as it read at the time of the alleged discrimination, provided that section 6 did not prohibit a distinction on the basis of (inter alia) age as related to any employee benefit plan or in any contract which provides an employee benefit plan if the guidelines, as seen by the Human Rights Commission were not discriminatory or the plan could not be provided if (age) distinction were not made.

The Board of Adjudication found that the exception allowed in section 7 related solely to actuarial considerations for the determination of benefits, and did not provide a basis for compulsory retirement or any other form of age discrimination, except insofar as age might affect occupational qualifications.

It was found that the complainant was unjustifiably dismissed on the basis of age contrary to section 6 of the Manitoba Human Rights Act.

A decision was made that the respondent company pay to the complainant an amount equivalent to six months gross salary.

ONTARIO

In Re The Ontario Human Rights Code,
R.S.O. 1970, c.318, as amended

and

In Re A Complaint by
Mrs. Dorothy Cummings That
Her Daughter Gail Cummings
Was Denied Accommodation Services
or Facilities, or Discriminated
Therein, on account of her sex by
The Ontario Minor Hockey Association,
contrary to Section 2(1)(a) and (b)
of the Ontario Human Rights Code

Gail Cummings age ten, had become a goalie on a Huntsville minor Hockey Association team in House League competition. She had responded to a September 30, 1976 newspaper advertisement announcing hockey registration for "Boys and Girls".

She later responded to an advertisement of October 21, 1976 announcing tryouts for an "All Star" or "Town Rep" team. She was selected by her coach as being worthy of a position on the team as a goalie.

She then submitted the Canadian Amateur Hockey Association approved registration certificate to the Ontario Minor Hockey Association for approval, as required.

After having played four games with the Atom All-Stars, Gail learned that her certificate had not been approved.

There was no contention that Gail was refused registration with the O.M.H.A. for any reason other than sex. She was judged by all standards, to be a capable athlete.

Refusal was based on the constitution and rules of the O.M.H.A. which is subject to the Ontario Hockey Association, which in turn is subject to the Canadian Amateur Hockey Association.

Regulations of both the O.H.A. and C.A.H.A. recognized only male hockey players.

It was alleged that denial of the chance for Gail Cummings to play on the O.M.H.A. team contravened section 2(1) of the Ontario Human Rights Code which provides that;

"2(1) No person directly or indirectly, alone or with another, by himself or by the interpretation of another shall,

- (a) deny to any person or class of persons the accommodation, services or facilities available in any place to which the public is customarily admitted; or
- (b) discriminate against any person or class of persons with respect to the accommodation, services or facilities available in any place to which the public is customarily admitted,

because of the race, creed, colour, sex, marital status, nationality, ancestry or place of origin of such person or class of persons or of any other person or class of persons".

The Inquiry hearing the case considered at length the meaning of the words "services" and "facilities", as well as the meaning of the phrase "any place to which the public is customarily admitted". For guidance in helping to determine these words, reference was made to the United Kingdom Sex Discrimination Act, 1975.

Other issues, such as decency, physical contact, etc. were considered also. These were secondary in importance.

The O.M.H.A. also argued that it was not a "person", and therefore section 2(1) ("any person who....") does not apply to it. The Inquiry did not agree with this argument after reference to The Interpretation Act, R.S.O. 1970, c.225.

It was found that the "boys only" rule of the O.M.H.A. and the refusal to accept registration for Gail Cummings contravened section 2(1) of the Ontario Human Rights Code.

An Order was made, October 31, 1977, that:

- a) the O.M.H.A. send to Gail Cummings a letter of apology for its exclusion of her last year and, whether or not the regular try-out for the Huntsville "Rep teams" had taken place or not, send to Gail an invitation to try out in the current year for the Huntsville "Rep team at her age level;

- b) Gail Cummings be accepted by the O.M.H.A. as a "Town Rep" player should she desire to try out for the Rep. Team at her age level, and should she be judged by the coach able to meet the relevant standards of competence for her position; and
- c) the O.M.H.A. accept for registration and register any female player whose ability has been found sufficient to cause her to be elected for the team membership by the coach of the Rep team for which she is by age, residence and amateur status eligible to play.

(TYPES OF FILES EXAMINED AT ENQUIRY)

LABOUR SECTOR1. Employment Agencies

Two female persons complained that two employment agencies had treated them differently than they treated men, when they availed themselves of these agencies' services. It was alleged that these agencies received women who came to the reception desk in such a way as to direct them to secretarial or support staff work in offices. Although some applicants expressed a desire to know about other offers of employment in different fields, employment agencies persisted in offering women only secretarial work. Men who went to these employment agencies had the opportunity to look into the various jobs offered by the agency that might be more in keeping with the applicants' aspirations: for men, schooling and past record mattered little and they could without difficulty apply for management positions or employment in fields having nothing to do with secretarial work.

The enquiry revealed that those facts were true. Following a period of mediation, the parties reached a settlement under which those employment agencies agreed to treat women, in the future, in the same manner as men. Furthermore, the employment form and the administrative practices of those agencies were modified so that everyone would be considered equally.

We also obtained that the agencies undertake to no longer accept discriminatory orders from clients. Finally, the employment agencies agreed with us to set up a program to make their staff aware of the rights and freedoms of persons.

The information we now have, a year after the settlement of that complaint, is to the effect that a major change has taken place in employment agencies, generally, and that the methods applied currently in this type of enterprise are more respectful of the principles laid down in the Charter. However, the Commission continues to keep a watchful eye, and checking will be carried out sometime in the future.

2. A school discharges two teachers because they are allegedly insufficiently qualified to perform their teaching functions.

These two teachers came to us to ask for an enquiry, as they alleged that their discharge was in fact based on national origin, as one is of French descent and the other is Armenian.

The enquiry showed that the discharge was really based more on discriminatory considerations than on qualifications. The facts as revealed allowed us to understand that it was expected of these teachers that they prepare their students in a particular manner to fit them for life in the community. It has become obvious to us that the management

of the school relied mostly upon the teachers' own integration in order to judge their ability to integrate their students. We were able to establish also that in a general way the evaluation of the competence of these teachers was not done very exactly and it appeared to us much too subjective.

After discussion with the school authorities, it was agreed that these teachers would be reinstated in their positions after an eight-month leave of absence and would be refunded the salary lost during that period, with all the fringe benefits attached to their position and in addition, the permanency in employment to which they were entitled. The teachers accepted this solution and were reinstated accordingly.

SASKATCHEWAN

(equal pay)

In the matter of a complaint against Simpsons-Sears Ltd., pursuant to Part V of the Labour Standards Act, SS. 1969, c.24 as amended, that Simpsons-Sears Ltd. has been and is discriminating between all its female employees employed as full-time regular sales clerks at rates of pay less than the rates paid to one full-time regular male sales clerk, for similar work performed, in the same establishment...contrary to section 41(1) of the said Act.

The Saskatchewan Human Rights Commission was requested to hold an inquiry into the complaint of female full-time sales clerks employed at Simpsons-Sears Ltd. store in Moose Jaw that they were being paid less than a male sales clerk who was performing similar work in the same establishment.

The Labour Standards Act, SS. 1969, c.24 as amended, in s.41 requires that

- (1) "No employer or person acting on behalf of an employer shall discriminate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee, or vice-versa, employed by him for similar work performed in the same establishment, the performance of which requires similar skill, effort and responsibility and which is performed under similar working conditions, except where such payment is made pursuant to a seniority system or a merit system.
- (2) "No employer shall reduce the rate of pay of any of his employees in order to comply with this provision of the Act."

It was admitted:

1. That the individuals involved did work in the same establishment;
2. that their working conditions were similar, "working conditions" being defined as "the physical working conditions".

The Commission heard evidence that certain full-time female employees were "back-up" for the division manager. That is, they could take over if the division manager was absent.

A Labour Standards investigator had previously been told by the personnel manager at Simpsons-Sears that the male employee in question was a management trainee, and this was the reason that he was being paid more than the other sales clerks. The male employee himself, when asked if he was aware of the management training program at Simpsons-Sears,

said he knew there was one but was waiting until he had been there for more than six months before applying for it. At the time he was interviewed by the Labour Standards investigator he was a sales clerk, was so considered by his division manager, and did not consider himself as anything else. The company rationale for his higher (than the women clerks) wages was that his wages were subsidized by the head office in Toronto, and that he was given training in every aspect of company operation, and thus be available to take a management position in any one of the Simpsons-Sears stores.

There was no attempt made by the company to show that the work done by the male employee when he was hired as a sales clerk was different from that of other sales clerks. In fact, he was initially inexperienced and learned a considerable amount from a lesser-paid but more experienced female employee. (Three female employees who were acting as "back-up" for managers in their departments were being paid \$140.00 per week at the same time that the male employee in question was being paid \$175.00 per week.)

Evidence was heard as to possible differences in skill, effort and responsibility in the jobs being performed by the male and female employees. It was found that the only two allowable exceptions to the Labour Standards Act as to equal pay, a seniority system or a merit system, did not exist in the present case.

It was ordered that:

1. The difference between the gross incomes of the male employee in question and the female employees in question be paid to the females, calculated from the date the male employee was hired, July 12, 1976, including the date of the commission's order, May 4, 1977;
2. The amount of compensation for back pay as awarded be calculated and agreed to by counsel for Simpsons-Sears Ltd. and the Saskatchewan Department of Labour, and that should the parties be unable to agree on the amount, either of them may apply to the Saskatchewan Human Rights Commission to determine same;
3. The said female full-time sales clerks employed at Simpsons-Sears Ltd. for similar work performed in the same establishment, the performance of which requires similar skill, effort and responsibility and which is performed under similar working conditions to the work performed from and after the 12th day of July, 1976 by the said male employee as a full-time sales clerk, be paid at a rate of not less than \$175.00 per week.
4. That Simpsons-Sears Ltd. cease and desist from further discrimination against any of its employees by paying them unequally contrary to the provisions of the Labour Standards Act.

In The Queen's Bench Judicial
Centre of Regina

In The Matter of The Labour
Standards Act, 1969, SS. Cap.24
And Amendments Thereto.

Between:

Simpsons-Sears Ltd. (Applicant)

and

The Saskatchewan Human Rights
Commission and The Department
of Labour (Respondents)

An appeal from the decision of the Saskatchewan Human Rights Commission in the case of Simpsons-Sears having discriminated against its female full-time regular sales clerks by paying them less than the rates paid to one full-time male sales clerk, for similar work performed, in the same establishment contrary to section 41(1) of the Labour Standards Act, SS. 1969, ch.24, as amended, (as reported above) was made by Simpsons-Sears Ltd. to the Court of Queen's Bench.

The appeal was on the grounds:

- (1) That on the whole of the evidence the Commission erred in fact and/or law in finding that the Applicant had discriminated within the meaning of section 41;
- (2) That the Commission acted without jurisdiction in its Order in paragraphs 1, 3 and 4 (above) when, under section 46(4) of the Labour Standards Act it had jurisdiction only to require compliance with section 41 during any period of time when there was discrimination as set forth in section 41;
- (3) That the Commission acted without jurisdiction in ordering in paragraph 2 of its Order, when it had no such authority to do so.

The court, after considering the arguments and evidence found that from July 12, 1976 until August 23, 1976, the male trainee clerk in question did in fact perform work similar to other full-time sales clerks. From August 23 until his promotion to an assistant in the Yard Goods department, however, he not only performed his regular duties but spent one-half to one hour per day studying the Divisional Manager's manual and discussing with management various aspects of the work which were the responsibilities of the Division Manager. This was considered by the Court not to be similar work, and entirely within the rights of the company.

The Court therefore set aside the Order of the Commission's Board of Inquiry, and ordered that Simpsons-Sears Ltd. pay to the female full-time sales clerks in its employ between July 12, 1976 and August 23, 1976 such amounts as would equalize each of their gross wages with that paid to the male trainee clerk in question (i.e., \$175.00 per week).

APPENDIX III

CANADIAN BILL OF RIGHTS

An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms

8-9 Elizabeth II, c. 44 (Canada)

[Assented to 10th August 1960]

Preamble

The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PART I

BILL OF RIGHTS

Recognition and declaration of rights and freedoms

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and

APPENDICE III

DÉCLARATION CANADIENNE DES DROITS

Loi ayant pour objets la reconnaissance et la protection des droits de l'homme et des libertés fondamentales

8-9 Elizabeth II, c. 44 (Canada)

[Sanctionnée le 10 août 1960]

Le Parlement du Canada proclame que la Préambule nation canadienne repose sur des principes qui reconnaissent la suprématie de Dieu, la dignité et la valeur de la personne humaine ainsi que le rôle de la famille dans une société d'hommes libres et d'institutions libres;

Il proclame en outre que les hommes et les institutions ne demeurent libres que dans la mesure où la liberté s'inspire du respect des valeurs morales et spirituelles et du règne du droit;

Et afin d'expliquer ces principes ainsi que les droits de l'homme et les libertés fondamentales qui en découlent, dans une Déclaration de droits qui respecte la compétence législative du Parlement du Canada et qui assure à sa population la protection de ces droits et de ces libertés,

En conséquence, Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète :

PARTIE I

DÉCLARATION DES DROITS

1. Il est par les présentes reconnu et déclaré que les droits de l'homme et les libertés fondamentales ci-après énoncés ont existé et continueront à exister pour tout individu au Canada quels que soient sa race, son origine Reconnaissance et déclaration des droits et libertés

Déclaration des droits

fundamental freedoms, namely,

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association; and
- (f) freedom of the press.

Construction of law

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

- (a) authorize or effect the arbitrary detention, imprisonment or exile of any person;
- (b) impose or authorize the imposition of cruel and unusual treatment or punishment;
- (c) deprive a person who has been arrested or detained
 - (i) of the right to be informed promptly of the reason for his arrest or detention,
 - (ii) of the right to retain and instruct counsel without delay, or
 - (iii) of the remedy by way of *habeas corpus* for the determination of the validity of his detention and for his release if the detention is not lawful;
- (d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards;
- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or

nationale, sa couleur, sa religion ou son sexe :

- a) le droit de l'individu à la vie, à la liberté, à la sécurité de la personne ainsi qu'à la jouissance de ses biens, et le droit de ne s'en voir privé que par l'application régulière de la loi;
- b) le droit de l'individu à l'égalité devant la loi et à la protection de la loi;
- c) la liberté de religion;
- d) la liberté de parole;
- e) la liberté de réunion et d'association, et
- f) la liberté de la presse.

Interprétation de la législation

2. Toute loi du Canada, à moins qu'une loi du Parlement du Canada ne déclare expressément qu'elle s'appliquera nonobstant la *Déclaration canadienne des droits*, doit s'interpréter et s'appliquer de manière à ne pas supprimer, restreindre ou enfreindre l'un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s'interpréter ni s'appliquer comme

- a) autorisant ou prononçant la détention, l'emprisonnement ou l'exil arbitraires de qui que ce soit;
- b) infligeant des peines ou traitements cruels et inusités, ou comme en autorisant l'imposition;
- c) privant une personne arrêtée ou détenue
 - (i) du droit d'être promptement informée des motifs de son arrestation ou de sa détention,
 - (ii) du droit de retenir et constituer un avocat sans délai, ou
 - (iii) du recours par voie d'*habeas corpus* pour qu'il soit jugé de la validité de sa détention et que sa libération soit ordonnée si la détention n'est pas légale;
- d) autorisant une cour, un tribunal, une commission, un office, un conseil ou une autre autorité à contraindre une personne à témoigner si on lui refuse le secours d'un avocat, la protection contre son propre témoignage ou l'exercice de toute garantie d'ordre constitutionnel;
- e) privant une personne du droit à une audience impartiale de sa cause, selon les principes de justice fondamentale, pour la définition de ses droits et obligations;
- f) privant une personne accusée d'un acte

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.

criminel du droit à la présomption d'innocence jusqu'à ce que la preuve de sa culpabilité ait été établie en conformité de la loi, après une audition impartiale et publique de sa cause par un tribunal indépendant et non préjugé, ou la privant sans juste cause du droit à un cautionnement raisonnable; ou

g) privant une personne du droit à l'assistance d'un interprète dans des procédures où elle est mise en cause ou est partie ou témoin, devant une cour, une commission, un office, un conseil ou autre tribunal, si elle ne comprend ou ne parle pas la langue dans laquelle se déroulent ces procédures.

Duties of
Minister of
Justice

3. The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the *Regulations Act* and every Bill introduced in or presented to the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

3. Le ministre de la Justice doit, en conformité de règlements prescrits par le gouverneur en conseil, examiner toute proposition de règlement soumise, sous forme d'avant-projet, au greffier du Conseil privé, selon la *Loi sur les règlements*, comme tout projet ou proposition de loi soumis ou présenté à la Chambre des communes, en vue de constater si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la présente Partie, et il doit signaler toute semblable incompatibilité à la Chambre des communes dès qu'il en a l'occasion.

Devoir du
ministre de la
Justice

Short title

4. The provisions of this Part shall be known as the *Canadian Bill of Rights*.

4. Les dispositions de la présente Partie doivent être connues sous la désignation: *Déclaration canadienne des droits*.

Titre abrégé

Savings

5. (1) Nothing in Part I shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of this Act.

5. (1) Aucune disposition de la Partie I ne doit s'interpréter de manière à supprimer ou restreindre l'exercice d'un droit de l'homme ou d'une liberté fondamentale non énumérés dans ladite Partie et qui peuvent avoir existé au Canada lors de la mise en vigueur de la présente loi.

Clause de
sauvegarde

"Law of
Canada"
defined

(2) The expression "law of Canada" in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada.

(2) L'expression «loi du Canada», à la Partie I, désigne une loi du Parlement du Canada, édictée avant ou après la mise en vigueur de la présente loi, ou toute ordonnance, règle ou règlement établi sous son régime, et toute loi exécutoire au Canada ou dans une partie du Canada lors de l'entrée en application de la présente loi, qui est susceptible d'abrogation, d'abolition ou de modification par le Parlement du Canada.

Définition: «loi
du Canada»

Déclaration des droits

Jurisdiction of
Parliament

(3) The provisions of Part I shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada. (3) Les dispositions de la Partie I doivent ^{Jurisdiction du} s'interpréter comme ne visant que les matières qui sont de la compétence législative du Parlement du Canada.

IX - APPENDIX B

Acts

| | |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------|
| Federal | <u>Canadian Human Rights Act</u> S.C. 1976-77 c.33 |
| Alberta | <u>The Individual's Rights Protection Act</u> , S.A. 1972, c.2; as amended 1973 c.61. |
| British Columbia | <u>Human Rights Code of British Columbia</u> , S.B.C., c.119; as amended 1974, c.87; 1976 Bill 178. |
| Manitoba | <u>The Human Rights Act</u> , C.C.S.M., c.H175, enacted by S.M. 1974, c.65, as amended 1975 c.42; 1976 c.48; 1977, c.46. |
| | <u>Employment Standards Act</u> , R.S.M. 1970 c.E110; as amended 1975 Bill 62, c.42; 1976, c.48. |
| New Brunswick | <u>Human Rights Code</u> , R.S.N.B. 1973, c.H-11, as amended 1976, c.31. |
| Newfoundland | <u>The Newfoundland Human Rights Code</u> , R.S.N. 1970, c.262; as amended 1973, Act No. 34 and 1974, Bill 114. |
| Nova Scotia | <u>Human Rights Act</u> , S.N.S. 1969, c.11; as amended 1970, c.85; 1971, c.69, 1972, c.65; 1974, c.46; 1977 c.18 and c.58. |
| | <u>Labour Standards Code</u> , S.N.S. 1972, c.10; as amended 1974, c.29. |
| Ontario | <u>The Ontario Human Rights Code</u> , R.S.O. 1970, c.318; as amended 1971, c.50, s.63; 1972, c.119; and 1974, c.73. |
| | <u>The Employment Standards Act</u> , 1974, S.O. 1974, c.112. |
| Prince Edward Island | <u>Human Rights Code</u> , S.P.E.I. 1975, c.72, as amended 1977 c.39. |
| Québec | <u>Charter of Human Rights and Freedoms</u> , S.Q. 1975 c.6 as amended 1976 c.5; 1977, Bill 88. |

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| Saskatchewan | <u>The Saskatchewan Human Rights Commission Act</u> , S.S. 1972, c.108; as amended 1973, c.94; 1976-77 c.81 s.6. |
| | <u>The Fair Employment Practices Act</u> , R.S.S. 1965, c.293; as amended 1972, c.43. |
| | <u>The Fair Accommodation Practices Act</u> , R.S.S. 1965, c.379; as amended, S.S. 1972, c.42. |
| | <u>The Saskatchewan Bill of Rights Act</u> , R.S.S. 1965, c.378; as amended, S.S. 1972, c.104. |
| | <u>The Labour Standards Act</u> , S.S. 1969, c.24; as amended 1971, c.19; 1971 c.4; 1972, c.59; 1973, c.51; 1973-74, c.53; 1974-75 Bill 32. |
| Northwest Territories | <u>Fair Practices Ordinance</u> , O.N.W.T. 1966, c.5; as amended 1974, c.4. |
| Yukon Territory | <u>Fair Practices Ordinance</u> , R.O.Y.T. 1971, c.F-2; as amended 1974, c.7. |
| | <u>Labour Standards Ordinance</u> , R.O.Y.T. 1971, c.L-1; as amended 1973, c.13; and 1974 c.9. |

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